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NUTTING TRUCK & CASTER  
BRD ITM/COM AUTH/PERMIT  
REQUEST FOR ISSUANCE OF A  
REQUEST FOR RESPONSE ACTION  
MARCH 24, 1987

MINNESOTA POLLUTION CONTROL AGENCY  
Solid and Hazardous Waste Division  
Agenda Item Control Sheet

Agenda # 16

MEETING DATE: March 24, 1987 APPEARANCE REQUESTED - YES: X NO:     

SCHEDULED TIME:                     

PREPARED BY: Frank X. Wallner <sup>RAS MK DR</sup> DATE MAILED : March 14, 1987

SUBJECT: Request for Issuance of a Request for Response Action to the Nutting Company Regarding Ground Water Contamination At and Around the Nutting Truck and Caster Hazardous Waste Site, Faribault, Rice County

LOCATION: Faribault Rice  
CITY COUNTY

TYPE OF ACTION:

Permit	<u>    </u>	Request For Hearing	<u>    </u>	New	<u>    </u>
Stipulation	<u>    </u>	Request for legal action	<u>    </u>	Modification	<u>    </u>
Contract	<u>    </u>	Variance request	<u>    </u>	Extension	<u>    </u>
Policy	<u>    </u>	Rulemaking	<u>    </u>	Revocation	<u>    </u>
Information	<u>    </u>	Administrative order	<u>    </u>	Other	<u>    </u>
Consent Order	<u>    </u>	Request for Response Action	<u>X</u>		

Negative Declaration

RECOMMENDED ACTION:

Issuance X <sup>4/5/87</sup> Approval      No action needed       
Denial      Authorization     

ISSUE STATEMENT: On September 27, 1983 the Minnesota Pollution Control Agency (MPCA) issued a Request for Response Action (RFRA) to the Nutting Company (Nutting) which required Nutting to conduct a Remedial Investigation/Feasibility Study (RI/FS) regarding ground water contamination associated with the Nutting Truck and Caster Hazardous Waste Site (Nutting Site). On April 26, 1984 the MPCA entered into a Consent Order (Order) with Nutting which required conduct of a RI/FS. The Order and the RFRA did not require Nutting to complete a Response Action Plan (RAP) or implement Response Actions (RAs). Nutting has completed a RI/FS and has proposed a RAP. Therefore, MPCA staff recommend that the MPCA Board issue a Request for Response Action (RFRA) to the Nutting Company regarding implementation of a RAP to address ground water contamination at and around the Nutting Site.

ATTACHMENTS:

- Request for Response Action with Exhibit
- September 27, 1983 Board Item and Request for Response Action Issued to the Nutting Company
- Site Location Map
- Definitions

MINNESOTA POLLUTION CONTROL AGENCY  
Site Response Section  
Division of Solid and Hazardous Waste

Request for Issuance of a Request for Response Action  
to the Nutting Company Regarding Ground Water Contamination  
At and Around the Nutting Truck and Caster Hazardous Waste Site  
Faribault, Rice County

March 24, 1987

ISSUE STATEMENT

On September 27, 1983 the Minnesota Pollution Control Agency (MPCA) issued a Request for Response Action (RFRA) to the Nutting Company (Nutting) which required Nutting to conduct a Remedial Investigation/Feasibility Study (RI/FS) regarding ground water contamination associated with the Nutting Truck and Caster Hazardous Waste Site (Nutting Site). On April 26, 1984 the MPCA entered into a Consent Order (Order) with Nutting which required conduct of a RI/FS. The Order and the RFRA did not require Nutting to complete a Response Action Plan (RAP) or implement Response Actions (RAs). Nutting has completed a RI/FS and has proposed a RAP. Therefore, MPCA staff recommend that the MPCA Board issue a Request for Response Action (RFRA) to the Nutting Company regarding implementation of a RAP to address ground water contamination at and around the Nutting Site.

I. BACKGROUND

On September 27, 1983 the Minnesota Pollution Control Agency (MPCA) made the necessary determinations and issued a Request for Response Action (RFRA) with respect to the release of hazardous substances at and around the Nutting Truck and Caster Hazardous Waste Site (Nutting Site) in Faribault. 1/ This Board Item does not repeat the factual information on determinations concerning facility, hazardous substance, release and threatened release, and responsible parties.

The RFRA required the Nutting Company (Nutting) (formerly the Nutting Truck and Caster Company) to conduct a Remedial Investigation/Feasibility Study (RI/FS) regarding ground water contamination associated with the Nutting Site. The RFRA also provided a basis for negotiating a Consent Order (Order).

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1/ The MPCA Board, in issuing the September 27, 1983 RFRA, made the determinations necessary at that time for RFRA issuance. (See Section II of the Board Item). The Board Item which accompanied the RFRA and supports the determinations is attached as Attachment 2. The determination that "the release is from the facility" has been included as a separate determination only in more recent RFRA's. Therefore, Part II.A. of this Board Item reiterates the information necessary for the Board to make the separate determination that the release is from the facility.

On April 26, 1984 the MPCA entered into an Order with Nutting which required Nutting to conduct a Remedial Investigation (RI), and if deemed necessary by the Director, a Feasibility Study.

## II. DISCUSSION

This discussion is divided into three sections, one providing a narrative discussion of the history underlying the proposed RFRA (Part II.A.); one describing the requested action (Part II.B.); and finally, one describing actions to be taken after the RFRA is issued (Part II.C.).

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### A. History Underlying this Request for Response Action

Nutting produced a variety of hand carts and caster wheels over the past 94 years at its plant in Faribault. Beginning in 1959 Nutting disposed of numerous chemical compounds, including solvents, in a seepage pit on Nutting property. In response to a 1979 notice of non-compliance Nutting excavated the contents of the pit and backfilled the pit with clean fill, thereby removing the main source of ground water contamination. Samples collected by Nutting at the time of the excavation confirmed that releases from the pit to the ground water are from the Nutting facility. The ground water is contaminated primarily by 1,1,2 trichloroethylene (TCE), and to a lesser extent by cadmium, lead, chromium, methylene chloride, and xylene. TCE in ground water was detected at concentrations of up to 570 parts per billion (ppb) near the Nutting property boundary, and is the main contaminant of concern.

Beginning in 1982, analysis of Faribault municipal water supply wells confirmed the presence of TCE. This discovery led MPCA staff to place a high priority on defining the extent and magnitude of contaminated ground water originating from the Nutting property.

The September 27, 1983 RFRA and the April 26, 1984 Order required Nutting to conduct a RI to assess the extent and magnitude of ground water

contamination, and to determine whether the Nutting Site contributed to contamination of the Faribault municipal water supply wells. Except for final payment of MPCA reimbursement expenses, Nutting has completed its obligations under the April 26, 1984 Order. The RI Final Report does not demonstrate that contamination from the Nutting property is the source of TCE measured at the Faribault municipal water supply wells, but concludes that response actions are ~~needed to mitigate localized TCE ground water contamination. The RI Final Report~~ was approved by the MPCA Director by letter dated October 15, 1986. Nutting also submitted a Feasibility Study (FS) which analyzed alternative remedies and documents selection of a ground water pump out system as the most appropriate response action. The FS submitted by Nutting was also approved by the Director's October 15, 1986 letter. At the request of the MPCA staff, on February 6, 1987 Nutting submitted a proposed Response Action Plan (RAP) which details a ground water pump out system. The proposed RAP is attached to this Board Item as Attachment A. to Exhibit 1.

Although the RFRA and Order did not require a Response Action Plan or response actions, Part XX of the April 26, 1984 Order specifically states, in part:

"The execution of this Order shall not preclude the MPCA from issuing to the Company a Request for Response Action for remedial or removal actions if the MPCA determines, based on the information gathered pursuant to this Order and other information available to the MPCA, that remedial or removal actions must be taken at or near the Company property."

Nutting has shown some interest in entering into a second Consent Order regarding implementation of response actions at the Site. However, Nutting contends that certain financial agreements between Nutting and its bank have restricted their ability to enter into an Order at this time. Consequently, MPCA staff believe that the issuance of a RFRA would set forth a schedule for clean up and provide a firm basis for Consent Order negotiations.

B. The Requested Response Actions are Reasonable and Necessary

The attached proposed RFRA describes a series of actions to be taken at the Nutting Site. These actions are reasonable and necessary to protect the public health, welfare, or the environment. The actions are also necessary to implement response actions at and around the Nutting Site. The response actions ~~described in the attached proposed RFRA include implementation of a ground water~~ pump out system.

The MPCA staff has evaluated the length of time it takes to accomplish the actions specified in the proposed RFRA, has considered the urgency of the situation, and established a reasonable schedule for completing these actions commensurate with these considerations.

C. The Actions Taken by the MPCA Staff after a Request for Response Action is Issued

In this section of the Board Item the MPCA staff sets out its view of the events that follow the issuance of certain RFRAs by the MPCA Board. The MPCA staff believes that an explanation of the manner in which the MPCA staff is implementing Minn. Stat. Chapter 115B. will assist both the MPCA Board and the recipients of RFRAs in determining what constitutes an adequate response to RFRAs.

Since the Minnesota Superfund Act was enacted, it has been and continues to be the opinion of the MPCA staff that, where possible, the MPCA should attempt to obtain from responsible persons a negotiated settlement on the response actions that are needed to be undertaken to clean up a hazardous waste site. In the MPCA staff's view, the issuance of a RFRA should not be considered the end to negotiations, but instead a useful and important step through which

negotiations can be brought to a head. The MPCA staff further believes that the actions specified in RFRA provide a sound basis for such negotiations.

In the MPCA staff's view, the procedure is as follows: the MPCA Board issues a RFRA. Either (a) responsible parties and the MPCA staff negotiate and reach agreement on a Consent Order resolving the issues raised in the RFRA, or (b) the responsible parties perform the requested actions or acceptable alternatives, without agreeing on a Consent Order, or (c) responsible parties refuse to undertake the actions specified in the RFRA. If negotiations are fruitful, MPCA staff will return to the MPCA Board requesting its approval of a signed Consent Order. If responsible parties refuse to perform the requested actions, MPCA staff will bring the matter back to the MPCA Board for a determination that the responsible parties will not take the actions requested within the established time periods.

### III. CONCLUSIONS

For the purpose of the proposed RFRA, in issuing the September 27, 1983 RFRA the MPCA made the necessary determinations with respect to the facility, hazardous substance, release and threatened release, and responsible parties. The proposed RFRA calls for implementation of the proposed ground water pump out RAP which was based upon the RI/FS conducted pursuant to the April 26, 1984 Consent Order.

### IV. RECOMMENDATIONS

The MPCA staff recommends that the MPCA Board adopt the suggested staff resolution on the following pages.

SUGGESTED STAFF RESOLUTION

BE IT RESOLVED, that the Minnesota Pollution Control Agency makes the following determinations:

1. The Nutting Truck and Caster Site located in Faribault, Minnesota  

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constitutes a facility within the meaning of Minn. Stat. § 115B.02, Subds. 5(a) and (c).
2. The wastes and substances found or disposed of at the Nutting Truck and Caster Site are hazardous substances within the meaning of Minn. Stat. § 115B.02, Subds. 8 and 9.
3. There have been one or more releases and continues to be a threatened release of hazardous substances at the Nutting Truck and Caster Site within the meaning of Minn. Stat. § 115B.02, Subd. 15.
4. The releases and threatened releases are from the Nutting Truck and Caster Site.
5. With respect to those releases and threatened releases the Nutting Company is a responsible person within the meaning of Minn. Stat. § 115B.03, Subds. 1(a) and (b).



6. The actions requested in the proposed Request for Response Action are reasonable and necessary to protect the public health or welfare or the environment.

7. The schedule for requested action in the Request for Response Action is reasonable taking into account the urgency of the actions for protecting the public health or welfare or the environment.

BE IT FURTHER RESOLVED that, based on these determinations, the Minnesota Pollution Control Agency hereby issues the Request for Response Action to the Nutting Company. The Chairman and the Executive Director are authorized to execute the Request for Response Action on behalf of the Minnesota Pollution Control Agency.

BE IT FURTHER RESOLVED that in issuing the Request for Response Action the Minnesota Pollution Control Agency adopts the factual determinations and reasons set forth in the Agency staff's memoranda dated September 27, 1983 and March 24, 1987 which accompanied the Agency staff's recommendation to the Agency.

ATTACHMENT 1

STATE OF MINNESOTA  
MINNESOTA POLLUTION CONTROL AGENCY

In the Matter of the  
Nutting Truck and Caster  
Hazardous Waste Site,  
Faribault, Minnesota

REQUEST FOR  
RESPONSE ACTION

To: The Nutting Company

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I. NOTIFICATION OF OBLIGATION TO TAKE RESPONSE ACTION

- A. This document is issued by the Minnesota Pollution Control Agency (MPCA) and constitutes a Request for Response Action (RFRA), as authorized by Minn. Stat. §§ 115B.17 and 115B.18.
- B. YOU ARE HEREBY NOTIFIED that the MPCA has made the following determinations:
1. The property located in Faribault, Minnesota, Rice County, known as the Nutting Truck and Caster Hazardous Waste Site (Nutting Site) constitutes a facility within the meaning of Minn. Stat. § 115B.02, Subds. 5(a) and (c). (The property located is hereinafter referred to as the "Nutting Site");
  2. the wastes and substances found or disposed of at the Nutting Site are hazardous substances within the meaning of Minn. Stat. § 115B.02, Subds. 8 and 9;
  3. there have been one or more releases and continues to be a threatened release of these hazardous substances from the facility within the meaning of Minn. Stat. § 115B.02, Subd. 15;
  4. the releases and threatened releases are from the Nutting Site; and
  5. with respect to these releases and threatened releases, the Nutting Company is a responsible person within the meaning of Minn. Stat. § 115B.03, Subds. 1(a) and (b).
- C. Having made these determinations, the MPCA formally requests that the Responsible Person take the response actions described in Section II of this RFRA. A timetable for beginning and completing the actions is set out in Section III. The reasons for the requested actions are set out in Section IV. Section V describes the intention of the MPCA to take action if the Responsible Person fails to take the requested response action within the timetable set out in Section III. Section V also describes the consequences of failure to satisfactorily respond to this RFRA.

- D. A period of ninety (90) days has been provided following issuance of this RFRA to allow the Responsible Person to meet with the MPCA staff. The purpose of this time period is to provide for negotiations on the specific terms of the requested action to be set forth in a Consent Order.

The Responsible Person must notify the MPCA staff by April 7, 1987 of its intention to undertake the response actions requested in the RFRA. Failure by the Responsible Person to notify the MPCA staff by April 7, 1987 of its intention to undertake the Response Actions may result in a determination by the MPCA that the Responsible Person is unwilling to take adequate response actions in this matter.

Notification should be sent to Frank X. Wallner, Project Manager, Division of Solid and Hazardous Waste, Minnesota Pollution Control Agency, 520 Lafayette Road North, St. Paul, Minnesota 55155, telephone number (612)296-7742.

- E. If a Consent Order between the Responsible Person and the MPCA staff is reached, the MPCA staff will present the proposed Consent Order to the MPCA Board. The Consent Order, if approved by the MPCA, will control the response actions taken at the Nutting Site. If no Consent Order is reached within the allotted time period and the Responsible Person does not otherwise agree to take the requested actions, the matter will be referred to the MPCA for a Determination of Inadequate Response. The MPCA, upon determining that a responsible person has not adequately responded, may authorize litigation to require the responsible person to take necessary response actions and/or reimburse the State for costs incurred if the State elects to implement response actions. These steps are described more fully in Section V.

## II. REQUESTED RESPONSE ACTIONS

The MPCA has determined (1) that the following actions constitute removal or remedial actions (response actions) within the meaning of Minn. Stat. § 115B.02, Subds. 16 and 17, and (2) that these response actions are reasonable and necessary to protect the public health, welfare or the environment. Consequently, the MPCA hereby formally requests that the Responsible Person take the response actions within the timetables established in Section III.

### A. Response Action Plan (RAP) and Response Action Implementation

The purpose of the RAP is to provide a detailed design of response actions which, upon implementation, will protect the public health, welfare, and the environment from the threatened or actual release of hazardous substances, pollutants or contaminants associated with the Nutting Site. Nutting has submitted a RAP which is attached to this RFRA as Attachment A to Exhibit 1. Implementation of the Response Actions shall be in accordance with Exhibit 1 - Response Action Implementation. Exhibit 1 is appended to and made an integral part of this RFRA.

B. Reports

The MPCA Director shall be provided with quarterly progress reports within the first month following the end of each quarter. The progress reports shall describe activities conducted pursuant to this RFRA during the preceding quarter and activities planned for the next quarter. The progress reports shall be addressed to:

Frank X. Wallner, Project Manager  
Division of Solid and Hazardous Waste  
Minnesota Pollution Control Agency  
520 Lafayette Road  
St. Paul, Minnesota 55155

III. TIMETABLE FOR COMPLETING THE REQUESTED RESPONSE ACTIONS

The MPCA, after considering the urgency of actions needed to protect public health or welfare or the environment, has determined that the following timetable is necessary and reasonable.

Notice of Intent to Comply	April 7, 1987
Consent Order Negotiation Period	April 7, 1987 to July 6, 1987
Retain Consultant to Complete Response Action Plan Requirements of Exhibit 1	Within 30 days of effective date of RFRA.
Submit Site Security and Safety Plans for Response Actions	Within 30 days of effective date of RFRA.
Implement Site Security and Safety Plans	Within 60 days of effective date of RFRA.
Initiate RAP Implementation	Within 30 days of the end of the negotiation period.
Report Results of RA Implementation	Within 30 days of completion of the RA.

The MPCA Director shall be promptly notified of any anticipated or actual failure to comply with the dates or other terms of this RFRA. Such notice shall include the reasons for the noncompliance and steps proposed for a return to compliance or alternative actions proposed for a return to compliance or alternative actions proposed to comply with the intent of this RFRA. The MPCA Director may accept or modify the proposed compliance

measures if the Director determines that such measures are adequate and that the need for the modification is not a result of failures within the control of the Responsible Person.

The MPCA Director may grant extensions of the time schedules set forth in this RFRA in the event that the Responsible Person demonstrates to the MPCA Director good cause for granting the extension. The extension shall be commensurate with the delays involved.

#### IV. REASONS FOR THE REQUESTED ACTION

~~Ground water at and around the Nutting Site in Faribault is contaminated~~ with trichloroethylene. An uncontained seepage pit used for several years to dispose of waste chemicals, solvents, and sludges was the source of ground water contamination. Wastes contained in the pit have been removed and properly disposed, but ground water beneath and around the pit remains contaminated at levels above the 31.2 ppb Recommended Allowable Limit (RAL) set by the Minnesota Department of Health (MDH). Trichloroethylene concentrations up to 570 ppb have been detected.

Nutting has completed a RI/FS regarding the contamination at and around the Nutting Site. Nutting has proposed a RAP which, upon implementation, would remedy ground water contamination. The RAP is attached to this RFRA as Attachment A to Exhibit 1.

The requested actions set out in Sections II and III will provide for implementation of appropriate response actions to remedy the releases.

#### V. MPCA INTENTION TO TAKE ACTION AND CONSEQUENCES OF RESPONSIBLE PERSON'S FAILURE TO TAKE REQUESTED ACTION

A. YOU ARE HEREBY NOTIFIED that under the Minnesota Environmental Response and Liability Act, if a responsible person fails to take the requested actions in an adequate or timely fashion, the responsible person may be subject to the following actions:

1. the MPCA may undertake to complete the requested response actions and seek reimbursement from the responsible person for all costs associated with such action; or
2. the responsible person may be subject to an action to compel performance of the requested response action or for injunctive relief to enjoin the release or threatened release.

In either case a responsible person who fails to take the response actions requested by the MPCA in an adequate or timely fashion may be required to pay a civil penalty in an amount to be determined by the court of up to \$20,000 per day for each day that the responsible person fails to take reasonable and necessary response actions.

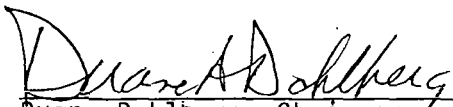
B. YOU ARE HEREBY FURTHER NOTIFIED that if you fail to take the requested response action, the MPCA intends to take one or more of the actions specified in A. above.


VI. REQUIREMENT TO REIMBURSE THE MPCA

YOU ARE HEREBY FURTHER NOTIFIED that the responsible person whether or not the requested response actions are taken, may be required to:

A. reimburse the MPCA for all reasonable and necessary expenses it has incurred and continues to incur including all response costs, and administrative and legal expenses associated with the installation, operation, maintenance and monitoring of the ground water pump out system.

B. pay for any damages to the natural resources resulting from the release of a hazardous substance.

  
Duane Dahlberg, Chairman

  
for Thomas J. Kalitowski, Director

DATE: March 24, 1987

EFFECTIVE DATE: March 24, 1987

Minnesota Pollution Control Agency

## Exhibit I

### RESPONSE ACTION IMPLEMENTATION

#### I. INTRODUCTION

Part II of the Request for Response Action (RFRA), to which this Exhibit is appended, requires the Nutting Company (Nutting) to implement Response Actions (RAs) at the Nutting Site. This Exhibit sets forth the requirements for implementing Nutting's Response Action Plan (RAP) which was submitted to the MPCA Director on February 6, 1987 and is appended to and made an integral and enforceable part of the RFRA. The RAP is attached to this Exhibit as Attachment A.

#### II. PREPARATION AND REVIEW OF SUBMITTALS

Nutting shall submit to the Minnesota Pollution Control Agency (MPCA) Director all reports, detailed plans and specifications, work plans, well placement and construction plans, and other submittals required by this Exhibit. The review and approval, modification or rejection of all submittals shall be made by the MPCA Director, except that the site safety and security plans described in Part IV of this Exhibit do not require MPCA Director approval.

#### III. RETAIN CONSULTANT

Within 30 days of the effective date of this RFRA, Nutting shall hire a consultant qualified to undertake and complete the requirements of this Exhibit and shall notify the MPCA Project Manager(s) of the name of that consultant(s).

#### IV. SITE SECURITY AND SAFETY PLANS

Nutting shall prepare and submit to the MPCA Director for comment (1) a Nutting Site security plan to limit and control the general public's access to the Nutting Site and (2) a Nutting Site safety plan to protect the health and safety of personnel involved in implementing the RAs.

The Nutting Site security and safety plans shall be submitted within 30 days of the effective date of the RFRA. At a minimum, the Nutting Site safety plan shall incorporate and be consistent with the requirements of:

1. Section 111(c)(6) of CERCLA as amended;
2. Occupational Safety and Health Guidance Manual for Hazardous Waste Site Activities (NIOSH/OSHA/USCG/U.S. EPA) DHHS Publication No. 85-115;
3. OSHA Requirements (29 CFR 1901 and 1926);

Nutting Site security and safety are the responsibility of Nutting. The MPCA Director may comment on the Nutting Site security and safety plans but will neither approve nor disapprove those plans.

Nutting shall implement the Nutting Site security and safety plans, taking into account the comments of the MPCA Director, if any, within 60 days of the effective date of the RFRA.

#### V. RESPONSE ACTION IMPLEMENTATION

Nutting shall implement the RAs specified in the attached RAP in a manner which accomplishes the purposes and meets the requirements of this Part. The purpose of RA implementation is to take those actions which will protect the public health, welfare, and the environment from the threatened or actual release of hazardous substances associated with the Nutting Site. Specific requirements for RA implementation are set forth in the three Tasks below.

##### Task A. Initiate RAs

Within thirty (30) days of the end of the negotiation period provided for pursuant to Part III of the RFRA, Nutting shall implement the RAs in accordance



with the methodologies and time schedules set forth in the attached RAP. RA implementation shall be conducted in accordance with all federal, state, and local laws, rules, regulations and ordinances.

Task B. Report Results of RA Implementation

Within thirty (30) days of completion of the implementation of the RAs, Nutting shall prepare and submit to the MPCA Director a RA Final Report which includes the following:

- (1) data and results of RA implementation;
- (2) follow-up actions, if any, which will be taken in the following 1 year period;
- (3) a certification that all work plans, specifications and schedules have been implemented and completed in accordance with the RAP as approved by the MPCA Director; and
- (4) an identification of difficulties encountered during the RAs' implementation which may impair or otherwise reduce the effectiveness of the RAs implementation to minimize or mitigate the release or threatened release of hazardous substances from the Nutting Site or which may require unanticipated operational or maintenance actions to maintain the effectiveness of any of the implemented RAs.

Task C. Approval of the RA Final Report

The MPCA Director shall review the RA Final Report submitted pursuant to Task B above, determine whether Nutting's obligations under this Exhibit have been satisfactorily completed, and notify Nutting. If the MPCA Director determines that Nutting's obligations under this Exhibit have not been satisfactorily completed, Nutting shall correct any deficiencies and resubmit the RA Final Report within thirty (30) days of the notification of the MPCA Director's determination.

# **RESPONSE ACTION PLAN**

## **THE NUTTING COMPANY FARIBAULT SITE**

Submitted To  
Minnesota Pollution Control Agency

February 6, 1987

Prepared By  
**BARR ENGINEERING CO.**  
Minneapolis, Minnesota

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## INTRODUCTION

This Response Action Plan (RAP), submitted on behalf of The Nutting Company (Nutting), will specify the methods and schedules for Remedial Action (RA) at the Nutting site. Section I will summarize the design of the remedial measures and the schedule for their implementation. Section II will present a Quality Assurance Project Plan (QAPP) to be utilized during implementation and monitoring. Section III, the monitoring plan, will specify short or long-term monitoring necessary to determine the status and effectiveness of the RA's which have been implemented.

### SECTION I REMEDIAL DESIGN

As a result of the Remedial Investigation (RI) and a limited Feasibility Study (FS) of alternative remedies, a pump-out system was selected as the most cost-effective remedy for the site. The pump-out system would intercept and mitigate the identified contaminant plume in the groundwater as it leaves the Nutting property. No other remedies were determined appropriate as a result of the RI/FS. The disposal pit which is believed to be the primary source for the observed contaminant plume was previously excavated and closed in accordance with procedures approved by the MPCA. Abandonment of two unused monitoring wells is included in the closure plan.

### REMEDIAL ACTIONS

The location of remedial activities is illustrated in Figure 1. In addition to two pumping wells (P-17 and P-18), a discharge system will be connected to the adjacent city storm sewer. Monitoring wells B-1 and B-2, which were temporarily abandoned in 1980 will be excavated and permanently abandoned in accordance with Minnesota Well Code.

The RI/FS determined that the most appropriate location for a pump-out system would be north of Division Street and west of Lincoln Street on property owned by Nutting. Preliminary design suggested that a single

pump-out well at that location could intercept the contaminant plume leaving the Nutting property and mitigate the most significant portion of any contaminant plume which might be downgradient of the proposed pump-out well. To verify the preliminary design, a pumping test was conducted as part of final design for the pump-out system.

#### Pumping and Slug Tests

A pump test was conducted using Well P-17 to determine (1) the aquifer characteristics of the St. Peter Formation, (2) the pumping capacity of the well, and (3) the effects of St. Peter pumping on drawdown in the overlying drift. Well P-17 was pumped for approximately 75 hours. Water levels in the pumping well, Monitoring Wells B-15 and B-16 (drift wells) downgradient Monitoring wells B-8 (St. Peter) and W-14 (Prairie du Chien) were measured continuously, beginning prior to pumping and continuing throughout the duration of the pumping test and for two days during recovery.

Directly above the St. Peter is a coarse unit of glacial drift in which little drawdown was observed during the pumping test. The drift was apparently sufficiently transmissive to supply water to the St. Peter with few drawdown effects and the size of the capture zone of Well P-17 within the drift was uncertain. It was determined that an additional pump-out well in the drift would be necessary to guarantee capture of any contaminant plume leaving the Nutting property. In order to determine the pumping rate and well design of the second pump-out well, slug tests were conducted in drift Monitoring Wells B-15 and B-16. The permeability of the drift aquifer was estimated to be 105 feet per day in the vicinity of the pumping well.

Analysis of the drawdown and recovery data from the pump test was inconclusive as to the permeability in the St. Peter Formation. Calculated permeabilities for the St. Peter were about one order of magnitude below those commonly felt to apply to the formation and published in various studies. However, sustained pumping rates were greater than those which could be supported by the aquifer if the calculated permeability were realistic. Thus, it was concluded that there was substantial recharge to

the St. Peter from the drift which affected the calculated permeabilities. Available data was reviewed and approximate modeling techniques were applied to estimate the permeability of the St. Peter Formation. This work suggested that the published values for permeability (on the order of 20 feet per day) were applicable for design of the St. Peter pump-out well.

#### Pump-Out System

Figure 2 illustrates the construction of Wells P-17 and P-18. Well P-17 extends to within 3 feet of the bottom of the St. Peter formation and is screened over the bottom 30 feet of its depth. Well P17 will be continuously pumped at a rate of up to 30 gpm, to create a capture zone in the St. Peter approximately shown in Figure 1. This capture zone is similar to that anticipated in the RI/FS report. In order to obtain a similar capture zone in the glacial drift, drift pumping well P18 will be placed near St. Peter Pumping Well P17. The Drift Well P18 will be screened over the full saturated thickness of the drift and will be pumped at approximately 20 gpm to create the capture zone shown in Figure 3.

Well P17 has been, and Well P18 will be, constructed in accordance with the Minnesota Well Code. Each well is to be fitted with a pitless adapter and will discharge to Manhole A shown in Figure 3.

Wells P17 and P18 will be pumped continuously until the concentration of Trichloroethylene (TCE) in Wells B15 and B16 is reduced to 50 parts per billion (ppb) or less for two (2) successive samplings. Sampling and analysis of Wells B15 and B16 shall be in accordance with Section III, Response Action Monitoring Plan, of this RAP. A conservative interpretation of laboratory data, including quality control samples, will be utilized in determining the concentration of TCE in Wells B15 and B16. In the event that pumping is discontinued, it will be resumed if, in implementation of the monitoring plan, the concentrations of TCE in Wells B15 and B16 are found to exceed 50 ppb. During periods when pumping is discontinued, the monitoring schedule will be as shown in Section III of this RAP, or as subsequently approved by MPCA.

### Discharge System

From Manhole A the discharge is piped by gravity to the catch basin located in the northwest quadrant of the intersection of Lincoln Avenue and Division Street (see Figure 3). From the catch basin the discharge will flow approximately three blocks west along Division Street to Old Trunk Highway 65 where it discharges to Crocker's Creek and flows north to the Cannon River, an additional distance of approximately 3/4 mile. The discharge route is shown in Figure 4. During the pumping test, concentrations of volatile organic contaminants were on the order of 20 ppb. This is far below the level at which contaminants would present any risk due to volatilization or physical contact; therefore, no treatment is planned. However, to encourage aeration in the discharge line, the connection between Manhole A and the city catch basin will be constructed of 8-inch diameter corrugated metal pipe to assure turbulent flow in the discharge line. In the unlikely event that future concentrations of volatile contaminants in the discharge water would require further aeration of the discharge, a false bottom will be provided in Manhole A which would facilitate installation of an aeration system.

### Closure Plan

Monitoring Wells B-1 and B-2 were temporarily abandoned following excavation of sludges from the disposal pit in 1980. Both wells are constructed of 1 1/2-inch PVC and extend into the St. Peter Formation adjacent to the old disposal pit. Since the drift and St. Peter aquifers are not considered separate units in this area, it is proposed to permanently abandon both wells by backfilling with a fine sand and bentonite mixture.

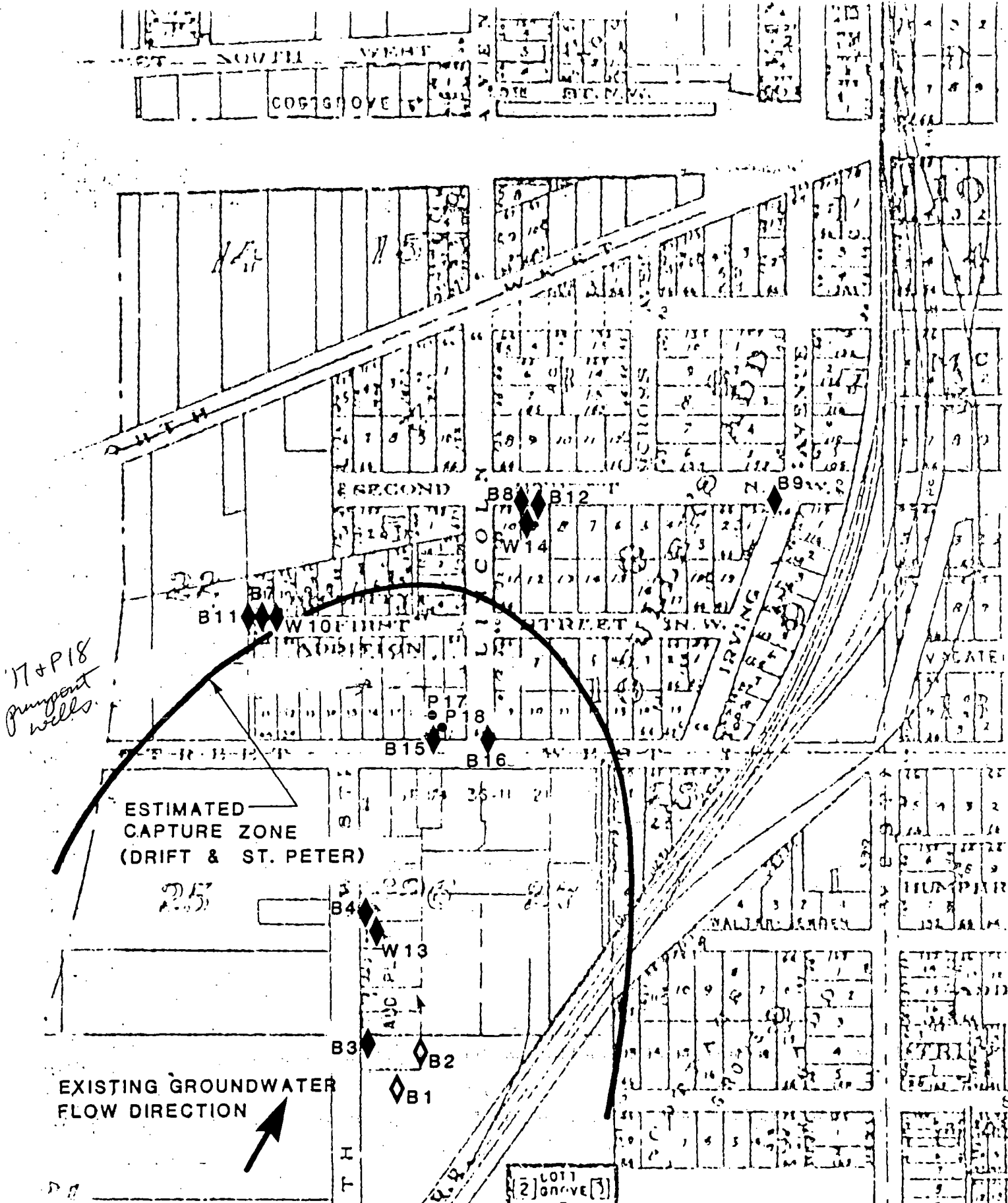
Except for the abandonment of monitoring Well B-1 and B-2 no additional closure activities are necessary. Past closure activities for the disposal pit area are considered to be complete and adequate in their present form.



All existing monitoring wells will be maintained until the MPCA grants approval for abandonment. The annual monitoring report to the MPCA (see Section III, Response Action Monitoring Plan) will recommend wells for abandonment. When such approval is granted and the monitoring wells are abandoned, they will be abandoned in conformance with the Minnesota Well Code.

#### SCHEDULE

Table 1 illustrates the proposed schedule of Remedial Actions. Weather permitting, it is desired to complete these actions at the earliest possible date to assure that the contaminant plume is controlled to the greatest degree possible. Abandonment of monitoring Wells B-1 and B-2 can be deferred until warmer weather.



- ◆ Monitoring Wells
- Pumping Wells
- ◇ Monitoring Wells to be Abandoned

Figure 1  
 MONITORING WELLS AND REMEDIAL ACTIONS  
 RESPONSE ACTION PLAN  
 THE NUTTING COMPANY

TABLE 1  
SCHEDULE OF REMEDIAL ACTIONS

<u>Task</u>	<u>Completion Time</u> <u>weeks after MPCA approval*</u>
Construct Pump-Out Well P17	Complete
Construct Pump-Out Well P18	4 weeks
Connection to Storm Sewer System	4 weeks
Abandon Monitoring Wells B1, B2	26 weeks
Restoration, Seeding	26 weeks

\*Including NPDES permit issuance.

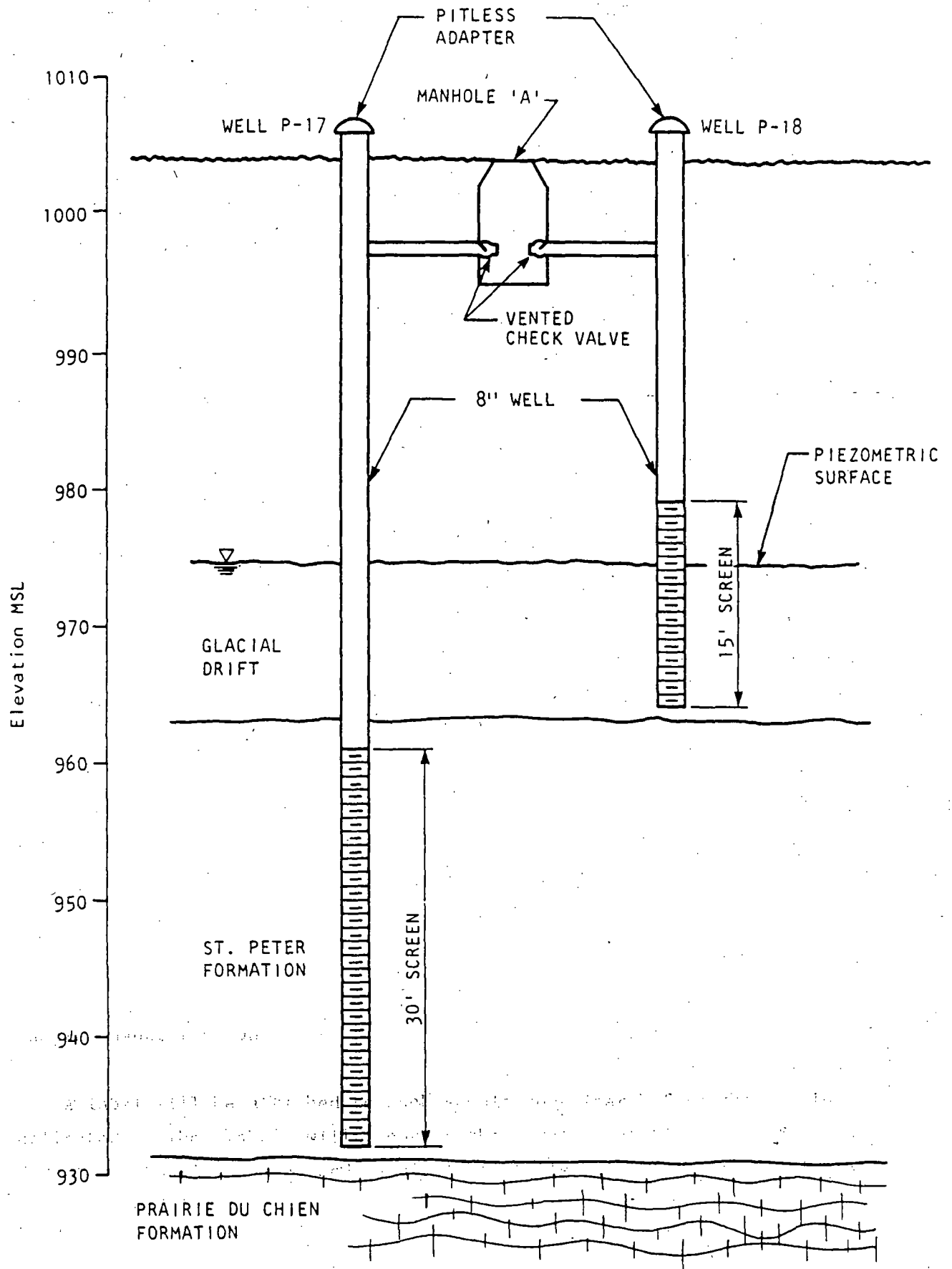


Figure 2  
 PUMPOUT WELL CONSTRUCTION  
 RESPONSE ACTION PLAN  
 THE NUTTING COMPANY

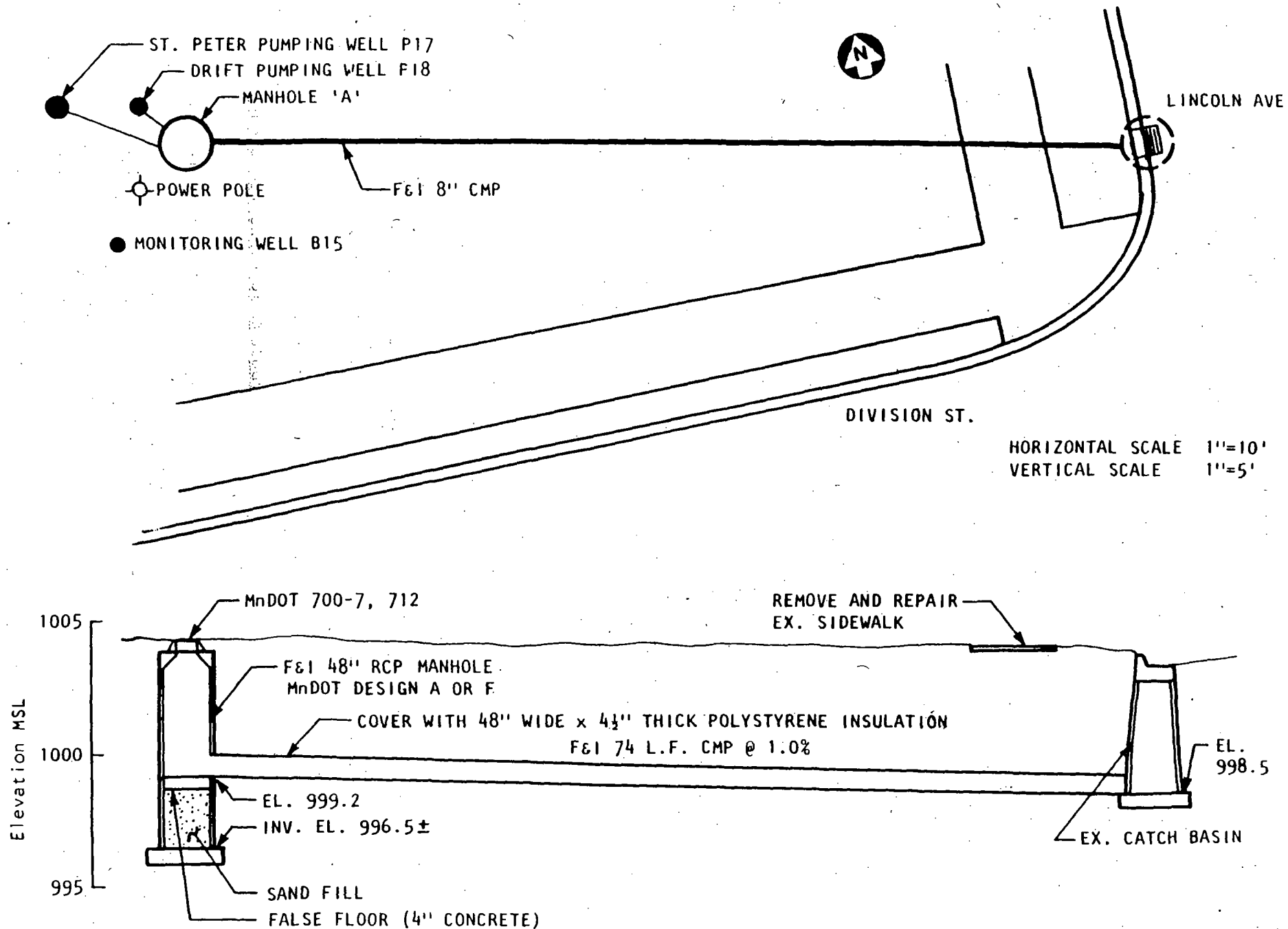
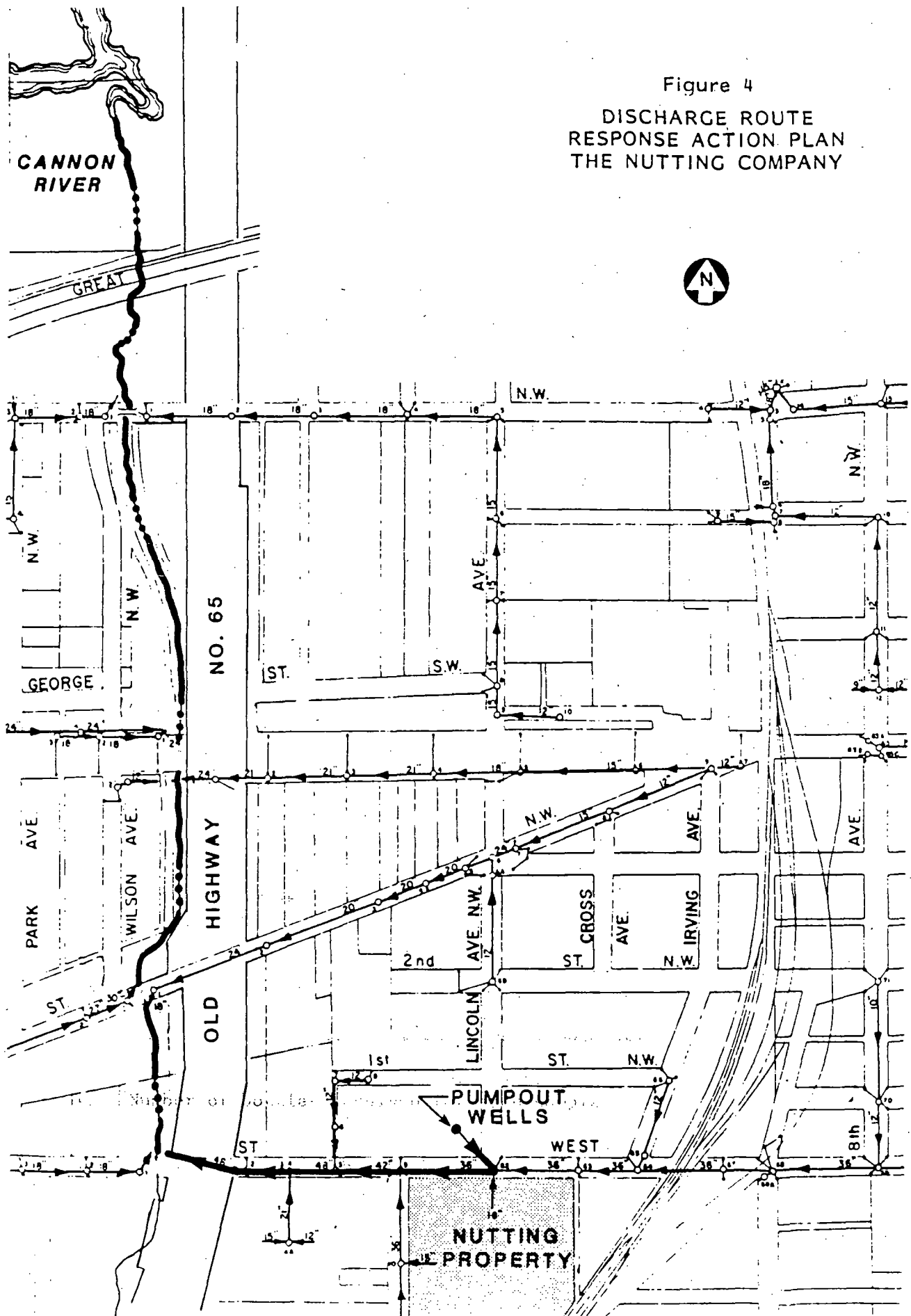


Figure 3  
 PUMPOUT DISCHARGE CONNECTION  
 RESPONSE ACTION PLAN  
 THE NUTTING CO.

Figure 4  
DISCHARGE ROUTE  
RESPONSE ACTION PLAN  
THE NUTTING COMPANY



SECTION II  
QUALITY ASSURANCE PROGRAM PLAN

PROJECT DESCRIPTION

A quality assurance program plan (QAPP) is required as part of the RAP for the Nutting site in Faribault, Minnesota. The QAPP describes the procedures for collecting and analyzing water samples as part of the monitoring for the site. The purpose of monitoring is to evaluate the effectiveness of the pump-out system.

PROJECT ORGANIZATION AND RESPONSIBILITY

Barr Engineering Co. will be responsible for the design of the monitoring wells and pump-out system and the collection of the water samples. PACE Laboratories will be responsible for the analysis of the water samples.

QUALITY ASSURANCE OBJECTIVES FOR MEASUREMENT OF DATA IN TERMS OF PRECISION, ACCURACY, COMPLETENESS, REPRESENTATIVENESS, AND COMPARABILITY

The water samples will be analyzed for the volatile organic compounds listed on Table 2. The method of analysis will be EPA 601.

The goals of accuracy, precision, and completeness for the sample data are the same for all parameters. Accuracy is acceptable as long as the laboratory internal quality control and audit samples show the analytical results to be within the 95 percent confidence limits. The precision is evaluated by computing an average coefficient of variation for the masked duplicate samples. If this average coefficient of variation exceeds 25 percent, the data is considered unreliable and is footnoted as such when published. The completeness of the data is acceptable if satisfactory results are obtained for 90 percent of the samples.

## SAMPLING PROCEDURES

### Sampling Order

A sampling order will be established prior to sampling and observed during collection of samples. Monitoring wells will be sampled in order of clean to dirty.

### Sample Collection

The following methods will be used to obtain samples. The sampler will wear new clean disposable gloves at each sampling station. The fewest possible number of people will handle the sample.

Prior to sampling a monitoring well, the depth to water from the top of the riser pipe will be measured to the nearest 0.1 of a foot. Monitoring wells will be purged prior to sampling using a centrifugal pump or bailers.

Pump inlets will be constructed of stainless steel or teflon. Stainless steel bailers with bottom filling teflon check valves or teflon bailers with bottom filling check valves will be used in collecting samples.

Stabilization tests will be conducted while purging a well. A well stabilization record form is given in Attachment 1. Specific conductance, pH, and temperature will be measured in the field at one well volume intervals until three successive readings yield equivalent values within the following range for each parameter:

- Specific Conductance: 0-500 scale  $\pm 10$  umhos/cm  
(temperature corrected) 500-5000 scale  $\pm 10$  umhos/cm
- pH  $\pm 0.1$  pH units
- Temperature  $\pm 0.5^{\circ}\text{C}$



A minimum of five well volumes will be removed from the well during a stabilization test. If a pumped well has not stabilized after 50 volumes have been removed or 30 minutes of purging and the well stabilization readings do not demonstrate a trend (slowly rising or falling pH, temperature or conductance), stabilization will be discontinued and the samples will be collected.

Samples will be collected using a bailer with stainless steel wire. The wire will be on a downrigger to prevent contact with the ground. Each specially prepared bailer will only be used to collect samples from one well.

Pumps, suction hoses, and tubing will be cleaned with soap and water and rinsed with tap water prior to use.

Each bailer will be cleaned in the laboratory prior to use by washing with soap and water and rinsing sequentially with tap water and distilled water. The bailers will be baked at 103° for at least one hour. The bailers will be transported to the field wrapped in aluminum foil with the shiny side out. Each specially prepared bailer will only be used to collect the samples from one well or surface water station before being returned to the laboratory for cleaning according to the previously described procedure.

The pump-out wells will be sampled at the sampling ports in Manhole A, which is shown on Figure 2. Because the pump-out wells are continuously being purged, no stabilization tests will be done before sample collection.

#### Sample Packaging

Volatile organic samples will be collected in septum vials. No head (air) space is left in the sample vial. If headspace is found in a vial, the vial is discarded and a replacement is collected. After the volatile organic samples have been collected, the septum vials will be individually wrapped in aluminum foil and sealed as sample sets in Ziploc plastic bags.

Three to five vials will be filled at each sampling station. Sample labels are filled out with pencil.

The volatile organic vials will be prepared by washing the vials with soap and water, rinsing with tap water, distilled water and baking in a muffle furnace at a temperature not less than 450°C for at least 60 minutes. The vials will be cooled in a desiccator over a bed of activated carbon prior to capping. The septums will be placed with teflon side facing up on a sheet of aluminum foil with the dull side of the foil facing up and baked at a temperature not less than 200°C for at least one hour. The septums will be collected in a desiccator over a bed of activated carbon prior to assembling. The vials, caps and septums will be assembled in a low solvent environment. The vials will be wrapped in aluminum foil with the shiny side out.

The following instruments or their equivalent will be used for analyses in the field:

1. Orion Research Model 407A pH Meter
2. YSI Model 33 Specific Conductance & Temperature Meter

Safety equipment necessary to meet the requirements of the site safety plan will be used on the job site. Safety gear consists of dermal protection.

#### CHAIN OF CUSTODY

##### Field Chain of Custody

##### Sample Identification

A label will be attached to each sample container before the sample is collected. The label will contain the sampling station identification, date taken, project name, and sampler's initials. Labels will be legible and completed in graphite pencil.

## Field Logs

A field log will be maintained throughout the program. Field measurements and other pertinent information about field activities will be recorded. The Field Log Cover sheet is shown in Attachment 2. The Field Log Data sheet is shown in Attachment 3.

## Chain of Custody

The field sampler will be responsible for custody of samples until they are properly dispatched to the laboratory or turned over to an assigned custodian. The field sampler will ensure that possession or sight of sample containers is maintained at all times or that the containers are stored in a securely locked area. A chain of custody form is shown in Attachment 4.

The chain of custody procedures will apply to all samples collected. All entries will be completed in indelible ink. The original chain of custody record will be sealed in a waterproof container and shipped inside the sealed transportation case. A copy of the record will be retained by the sampling team.

## Photo Documentation

Color slides or photographs will be taken to show all sampling locations once per year. Written documentation on the photographic record will include photographer's initials, project name, date and sampling site.

## Laboratory Chain of Custody

### Control of Incoming Samples

PACE Laboratories, Inc. has a sample custodian whose primary responsibility is to document receipt of samples, initiate the appropriate log-in procedures described below, assure proper documentation and prompt

analyses of the samples. He also maintains proper custody of samples and analytical data to verify the integrity of reports submitted to our clients.

When samples are received at the laboratory and they are accompanied by a chain of custody form, the sample custodian will initiate the following steps:

1. Verify that each sample was in the packing container as recorded on the chain of custody record.
2. Document on the Chain of Custody form any breaking of seal or sample bottles which may have occurred during transport to the laboratory.
3. If all data and samples are correct, sign and date the "received at laboratory by" box. The exact number of sample containers received by the laboratory is recorded for each sample.

All samples received by PACE Laboratories, Inc. are identified and labeled showing the name of the client, sample location or code, date received and the preservative added to the bottle. Samples are entered into the log book which contains the following:

1. A number assigned to each sample. Numbers begin with 1 on the first day of the year.
2. Identification of the client by name.
3. Date the sample was received at the laboratory.
4. Number of bottles received for each sample.
5. Initial of person who checked in samples.

Next, a sample check-in sheet is filled out. This sheet contains all pertinent information about the client, sample collection, sample matrix, analyses to be performed and number of bottles received. To complete the check-in procedure, the samples name is entered on each data sheet corresponding to the parameter to be analyzed. Each raw data sheet contains all the data necessary to perform the calculations for the final results. There is also a "comments" section that allows for special instruction in sample analysis or for observations made during analysis that may impact the final result. Before samples are stored, they are rechecked to make sure they are in the correct container and are properly preserved.

#### Maintenance of Custody

PACE Laboratories, Inc. has implemented standard operating procedures to assure the integrity of both sample and data so that they are not degraded or disclosed to unauthorized personnel. In order to ensure that this policy is maintained, the laboratory facilities are under controlled access. Only employees of PACE Laboratories, Inc. are allowed access to the laboratory facilities. Unauthorized personnel must register at the front desk and obtain a visitors badge prior to entering the laboratory. Visitors are accompanied at all times when in the laboratory by an employee of PACE Laboratories, Inc. The building is locked and secured at the end of each working day. Keys to the building are issued only to select personnel. Samples are stored either in a large walk-in cooler at 4°C, at room temperature or in ventilated hazardous waste cabinets. The walk-in coolers and hazardous waste cabinets have locks and are secured at the end of each working day by the sample custodian.

Samples are removed from their proper storage location by the analyst and are returned to the storage area immediately after the required sample volume has been taken. This minimizes unnecessary time spent searching for samples and helps prevent matrix degradation from prolonged exposure to room temperature.

Samples remain in their original locations until the report is completed. Then they are removed and stored at room temperature for four weeks after the report is sent. If there are no questions concerning the results or no further analyses are requested, after this time, the samples are properly discarded.

## CALIBRATION PROCEDURES AND FREQUENCY

### Initial Demonstration Laboratory Capability

To demonstrate the capability of the laboratory to generate valid data, the following steps need to be performed:

1. A spike solution containing the parameters to be tested is prepared in an appropriate solvent at a concentration level 1,000 times greater than the analyses range. The concentration of the spike solution is selected so that it will yield samples that are spiked at least 2\* the detection level.
2. The spike solution is diluted a thousand fold into reagent water and at least seven replicates are carried through the analyses.
3. The average percent spike recovery (R) and the standard deviation percent (s) are calculated for the replicates.
4. If additional spiked replicates are analyzed at several concentration levels, the average percent recovery (R) and standard deviation percent(s) for these are also calculated.
5. The calculated R and s values are compared to EPA literature and/or any other literature values available.
6. The upper and lower control limits are calculated at  $\pm 3 * S$ .

7. The upper and lower control limits and the average percent recovery are utilized to construct control chart for the ongoing quality control.
8. The method detection limit is calculated.
  - a. Seven replicates prepared in blank water at 1 to 5 times the estimated detection limit are analyzed.
  - b. The variance ( $S^2$ ) and standard deviation (S) of the replicate are calculated as follows:

$$S^2 = \frac{1}{n-1} \left[ \sum_{i=1}^n x_i^2 - \left\{ \frac{\sum_{i=1}^n x_i}{n} \right\}^2 \right]$$

$$S = [S^2]^{\frac{1}{2}}$$

where the  $X_i$ ,  $i=1$  to  $n$  are the analytical results obtained from  $n$  samples and  $\sum X_i^2$  refers to the sum of the  $x$  values from  $i=1$  to  $n$ .

- c. The method detection limit (MDL) is computed as follows:

$$MDL = t(n-1, 1-\alpha = .99) * S$$

#### t-STUDENTS T VALUES AT 99% CONFIDENCE LEVEL

<u>Number of Replicates</u>	<u>Degrees of Freedom (n-1)</u>	<u>t(n-1, 1-<math>\alpha</math>-.99)</u>
7	6	3.143
8	7	2.998
9	8	2.896
10	9	2.821
11	10	2.764

16	15	2.602
21	20	2.528
26	25	2.485
31	30	2.457
61	60	2.390
infinity	infinity	2.326

d. The 95 percent limits are calculated as follows:

$$MDL_{lcl} = 0.69 MDL$$

$$MDL_{uc1} = 1.92 MDL$$

where  $MDL_{uc1}$  and  $MDL_{lcl}$  are the upper and lower 95 percent confidence limits based on seven replicates.

9. Any changes in lab preparation or chromatography that may effect the recovery, cleanup or detection of the compounds requires that this entire section be repeated.

Ongoing Program of Analysis of Spikes, Duplicates and Outside Reference Samples

1. At least 10 percent of all laboratory samples or one per month must be collected in duplicate, spiked and analyzed for the parameters of interest.
2. At least 10 percent of all lab samples or one per month must be collected in duplicate and analyzed for the parameters of interest.
3. The recoveries must be plotted on QC charts which have UCL and LCL limits on them.
4. If the results fall outside those levels, a laboratory out of control (LOC) situation exists.



5. The problem is then identified, corrected, and documented in the LOC notebook.
6. When utilizing liquid extraction methods, one method blank must be analyzed per set or when reagents are changed, to demonstrate that interferences in the system are under control;.
7. For purge and trap, a method blank must be analyzed each day to demonstrate that interferences in the system are under control.
8. Outside reference samples are processed through the total procedure at least once per quarter.
9. When doubt exists as to the identification of a compound, confirmation work is done by a different column, different detector, or mass spectrometer to verify results.

#### Daily Calibration

Initially, the calibration is performed at three levels with the lowest concentration near the MDL. The response factors of the calibration curve are recorded. The daily response factors are checked against the calibration each day an analyses is run.

1. On a daily basis, a single concentration of a standard is analyzed and the response factor must agree within 10 percent of the calibration curve. If not, the standard is remade or a new three level calibration curve is prepared.
2. Each day the calibration standard is verified by analyses of an additional outside standard such as an EPA concentrate.

## LABORATORY ANALYTICAL METHODS

The volatile organic compounds will be analyzed using EPA 601 with a Hall detector. The analytical procedures for this method are similar to EPA Method 502.1.

### DATA REDUCTION, VALIDATION AND REPORTING

The data reduction scheme for field data is described in Sampling Procedures and for laboratory data in Calibration Procedures and Frequency. The criteria for validating data integrity will be done within the laboratory using procedures described in Calibration Procedures and Frequency. In addition blank samples will be collected and analyzed along with each group of samples submitted to the laboratory. The blank samples will serve as a check of the bottle cleaning procedures and the sample handling techniques. During the collection of the groundwater samples, the bailers will also be checked for visible contamination.

Blanks will be prepared for each sampling trip. Data on the blank samples will be included in the reports.

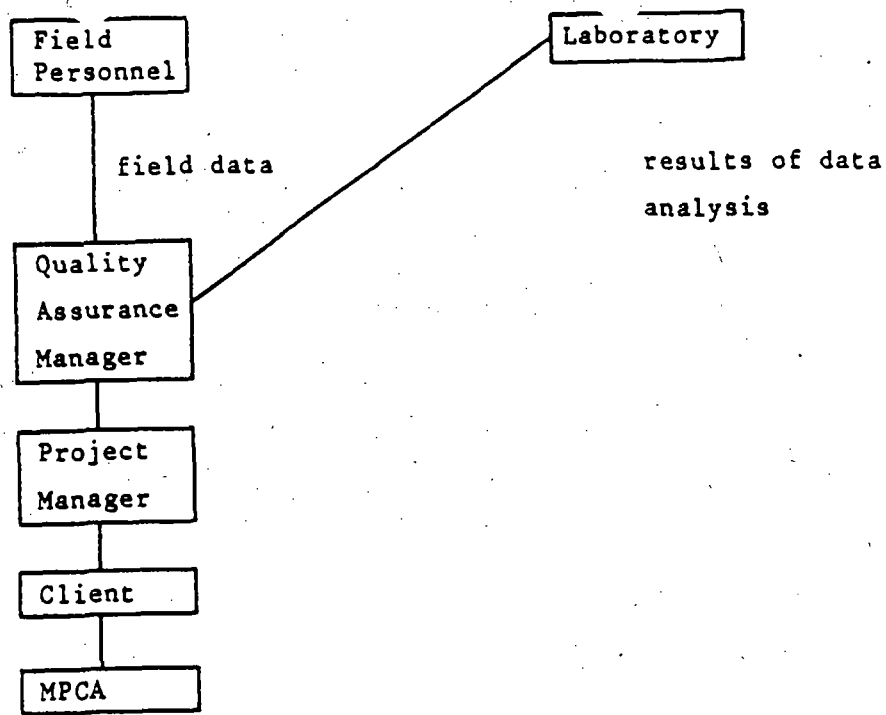
A blind duplicate water sample will be collected from a randomly selected station.

The criteria for identifying and treating outliers is described in Quality Assurance Objectives. The average coefficient of variation will be computed using the formula:

$$C.V. = \left\{ \frac{\sum_{i=1}^n \frac{R_i^2}{X_i}}{2n} \right\}^{1/2}$$

where C.V. is the coefficient of variation, n is the number of parameters in the analysis,  $R_i$  is the difference of duplicate pair, and  $X_i$  is the means of duplicated pair.

The data flow is shown in the flow chart below:



#### INTERNAL QUALITY CONTROL CHECKS

Internal quality control checks are described in Sampling Procedures and Calibration Procedures and Frequency.

#### PERFORMANCE AND SYSTEM AUDITS

The QAM conducts performance and system audits on work by PACE Laboratories on a continuing basis. The results of the audits are discussed as problems occur and general issues are discussed at quarterly meetings.

PACE Laboratories conducts internal audits and participates in the EPA audit program for laboratories for the compounds in this study.

#### PREVENTIVE MAINTENANCE

The instrumentation and equipment used are regularly evaluated to ensure proper operating condition and performance.

Traps and columns are replaced as necessary based on the statistical evaluation of the standards and spiked samples. The lamp in the PID is replaced when the RF does not fall within an acceptable range.

#### SPECIFIC ROUTINE PROCEDURES USED TO ASSESS DATA PRECISION, ACCURACY AND COMPLETENESS

Routines for accuracy are described in Calibration Procedures and Frequency. Routines for precision are described in Data Reduction, Validation and Reporting. Routines for completeness are described in Quality Assurance Objectives.

#### CORRECTIVE ACTION

When the QC data indicate that the concentration of the check sample falls outside the accepted range or the standard deviation exceeds the acceptance criteria, the source of the problem is located and corrected. Two examples of problems and corrective actions are:

1. If the standard data has a response below the accepted range, the standards and spikes are rerun. If the problem persists after the rerun, new solutions for standards and spikes are prepared and analyzed. The system is checked for leaks and the PID lamp may be replaced.
2. If the baseline has noise or other irregularities, the spargers are cleaned, the purge and trap is checked and replaced. The gas chromatography column is checked and replaced if necessary.

After finding and correcting the problem, the RF is recalculated and the QC check sample re-analyzed.

#### QUALITY ASSURANCE REPORT

The quality assurance performance will be addressed in the Annual Monitoring report to the MPCA.

RAPNUT/332,0

### SECTION III

#### RESPONSE ACTION MONITORING PLAN

This section of the Remedial Action Plan will describe continuing groundwater monitoring including parameters to be analyzed, analysis procedures to be used, wells to be monitored, frequency of monitoring, and reporting of data.

The samples will be analyzed for the volatile organic compounds (VOC) listed on Table 2 using EPA Method 601 except as noted below. During the first year, samples will be collected four times annually from B15, B16, P17 and P18 and semi-annually from B4, B8, B12, W13, and W14. Once annually, the samples from B15, B16, P17 and P18 will be analyzed using EPA Method 601 and 602 for a complete VOC scan. Other samples will be taken to comply with NPDES permit requirements. Water level elevations will be measured at selected wells as necessary four times per year. The frequency of monitoring may be adjusted after the first year, subject to MPCA approval.

Quarterly reports will be submitted to the MPCA on the tenth day of the first month of the quarter, or as soon thereafter as laboratory data is received for all samples. The quarterly reports will contain lab reports and water elevation data for sampling performed in the previous quarter.

An annual report will be submitted to the MPCA during January. This report will contain summaries of the water quality and water elevation data collected in the year. This data will be presented on tables with data from previous years and on maps showing geographical distribution of the plume. An evaluation of the effect of the pump-out system will be included in the annual report as will recommendations for the next year of monitoring, including modifications in the wells to be monitored and the frequency of monitoring. Monitoring schedules for subsequent years will be subject to MPCA approval and approved changes to the NPDES permit. The report will also include any recommendations for modifications to, or abandonment of, the monitoring or remedial systems.

TABLE 2  
MONITORING SCHEDULE<sup>1</sup>  
(First Year)

Location	Months following Implementation <sup>2</sup>											
	1	2	3	4	5	6	7	8	9	10	11	12
Well B4	P						P					
Well B8	P						P					
Well B12	P						P					
Well W13	P						P					
Well W14	P						P					
Well B15	V			P			P			P		
Well B16	V			P			P			P		
Well P17	V			P			P			P		
Well P18	V			P			P			P		
Water Levels in selected wells	o			o			o			o		

V - Complete volatile organic scan per EPA Methods 601 and 602.

P - Partial scan, using EPA Method 601, for:

1,1 - Dichloroethylene

1,2 - Dichloroethylene

Trichloroethylene

Adjustments to schedule may be required to comply with NPDES permit

Implementation requires RAP approval, NPDES permit issuance, construction

## MINNESOTA POLLUTION CONTROL AGENCY

## Agenda Item Control Sheet

Blue = DWQ  
 Yellow = DAQ  
 Green = DSW  
 Pink = Other  
 Gold = Info

Agenda # 18

MEETING DATE: September 27, 1983 APPEARANCE REQUESTED - YES: X NO:       
 SCHEDULED TIME:                     

PREPARED BY: Edward R. Meyer DATE PREPARED: August 29, 1983  
 DATE MAILED: September 16, 1983

SUBJECT: Request for Issuance of a Request for Response Action to the Nutting Truck and Caster Company Regarding Contamination at and Around the Company's Site in Faribault

LOCATION: Faribault CITY Rice COUNTY

## TYPE OF ACTION:

Permit <u>    </u>	Request For Hearing <u>    </u>	New <u>    </u>
Stipulation <u>    </u>	Request for legal action <u>    </u>	Modification <u>    </u>
Contract <u>    </u>	Variance request <u>    </u>	Extension <u>    </u>
Policy <u>    </u>	Rulemaking <u>    </u>	Revocation <u>    </u>
Information <u>    </u>	Administrative order <u>    </u>	Other <u>X</u>

## RECOMMENDED ACTION:

Issuance X Approval      No action needed       
 Denial      Authorization     

ISSUE STATEMENT: Ground water beneath the Nutting Truck and Caster Company (Company) site in Faribault is contaminated with a hazardous substance resulting from the Company's disposal of wastes in an on-site pit. The Minnesota Pollution Control Agency (MPCA) staff recommend that the MPCA issue to Nutting Truck and Caster Company a Request for Response Action, which could serve as the MPCA basis for negotiation of an agreement with the Company under which the Company would conduct a remedial investigation of ground water contamination.

## ATTACHMENTS:

1. 18-Page Memorandum and Suggested Staff Resolution
2. Definitions

MINNESOTA POLLUTION CONTROL AGENCY  
Solid and Hazardous Waste Division  
Site Response Section

Request for Issuance of a Request for Response  
Action to the Nutting Truck and Caster Company Regarding  
Contamination at and Around the Company's Site in Faribault

September 27, 1983

ISSUE STATEMENT

Ground water beneath the Nutting Truck and Caster Company (Company) site in Faribault is contaminated with a hazardous substance resulting from the Company's disposal of wastes in an on-site pit. The Minnesota Pollution Control Agency (MPCA) staff recommend that the MPCA issue to Nutting Truck and Caster Company a Request for Response Action, which could serve as the MPCA basis for negotiation of an agreement with the Company under which the Company would conduct a remedial investigation of ground water contamination.

I. BACKGROUND

The Environmental Response and Liability Act (Minnesota Superfund Act), Minnesota Laws 1983, chapter 121, establishes procedures through which the MPCA can protect the public health or welfare or the environment. The operative provisions of the Minnesota Superfund Act with respect to removal and remedial action are contained in section 17. Section 17, subd. 1 provides that:

Whenever there is a release or threatened release from a facility of any pollutant or contaminant which presents an imminent and substantial danger to the public health or welfare or the environment or whenever a hazardous substance is released or there is a threatened release of a hazardous substance from a facility:

(a) The agency may take any removal or remedial action relating to the hazardous substance, or pollutant or contaminant, which the agency deems necessary to protect the public health or welfare or the environment. Before taking any action the agency shall:



(1) Request any responsible party known to the agency to take actions which the agency deems reasonable and necessary to protect the public health or welfare or the environment, stating the reasons for the actions, a reasonable time for beginning and completing the actions taking into account the urgency of the actions for protecting the public health or welfare or the environment, and the intention of the agency to take action if the requested actions are not taken as requested;

(2) Notify the owner of real property where the facility is located or where response actions are proposed to be taken, if the owner is not a responsible party, that responsible parties have been requested to take response actions and that the owner's cooperation will be required in order for responsible parties or the agency to take those actions; and

(3) Determine that the actions requested by the agency will not be taken by any known responsible party in the manner and within the time requested.

(b) . . . .

In summary, section 17 requires that, before it takes removal or remedial action, the MPCA must (1) issue Requests for Response Action to known responsible parties; (2) notify the owners of the property at which the requests for response action are directed (if the owners are not responsible parties); and, (3) determine that no known responsible party will take the action within the manner and time requested.

In addition, section 17 provides that, before it can issue a Request for Response Action, the MPCA must find that (1) there is a release or threatened release; (2) the release or threatened release was from a facility; (3) the release or threatened release involves either (a) a pollutant or contaminant which presents an imminent or substantial danger to the public health, welfare or the environment or (b) a hazardous substance; and, (4) the persons to whom the Requests for Response Action are to be directed are responsible parties. [The terms release; facility; pollutant or contaminant; hazardous substance; and, responsible parties are all defined in the Minnesota Superfund Act. These

definitions are set out in Attachment 6 and discussed in Part II (Discussion) of this Board Item.]

The attached Request for Response Action refers to authority found in Minnesota Laws 1983, chapter 121, section 17 and section 18. (See I.A. of the attached Request for Response Action.) The discussion above describes the requirements of Requests for Response Action issued under section 17. The discussion below explains the applicability and requirements of section 18 Requests for Response Action and the relationship between section 17 and 18.

Section 17 of the Minnesota Superfund Act establishes both the procedures through which the MPCA requires responsible parties to take removal and remedial action and the prerequisites for the MPCA to take the action itself. Among other things, Section 18 establishes procedures for bringing actions against responsible parties to compel performance and for injunctive relief.

Like section 17, section 18 includes a provision related to Requests for Response Action:

Subd. 3. [REQUESTS FOR RESPONSE ACTIONS.] A request for emergency removal action shall be made by the director. Other requests for response actions shall be made by the agency. A request shall be in writing, shall state the action requested, the reasons for the action, and a reasonable time by which the action must be begun and completed taking into account the urgency of the action for protection of the public health or welfare or the environment.

Unlike section 17, section 18 does not specify when the Requests for Response Action are to be issued. Given the focus of section 18, it is, however, reasonable to construe that section as requiring the MPCA to issue Requests for Response Action prior to bringing an action to compel performance or for an injunction.

The content of both section 17 and section 18 Requests for Response Action are largely the same: All section 17 Requests for Response Action will be sufficient to constitute section 18 Requests for Response Action. 1/ It is therefore efficient and reasonable for the MPCA to issue a joint section 17 and section 18 Request for Response Action. In doing so, the MPCA will preserve its options to take removal and remedial action or to bring an action to compel performance or for an injunction. For this reason, the MPCA staff recommends in this Board Item that the MPCA issue joint section 17 and section 18 Requests for Response Action.

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1/ Prior to making section 17 Requests, the MPCA must make four preliminary determinations (see discussion supra.) Although it is not explicitly required, these four determinations probably need also be made before a section 18 Request is issued.

There is, however, a substantive difference in the actions the MPCA must take under section 17 and under section 18 after it has issued a Request for Response Action. That is, under section 17, the MPCA may not take removal or remedial action until after it finds that no responsible party will take the action in the time and manner requested in the Request for Response Action. Under section 18, however, the MPCA need not make this finding and may simply commence an action to compel performance or for an injunction after it has issued a Request for Response Action.

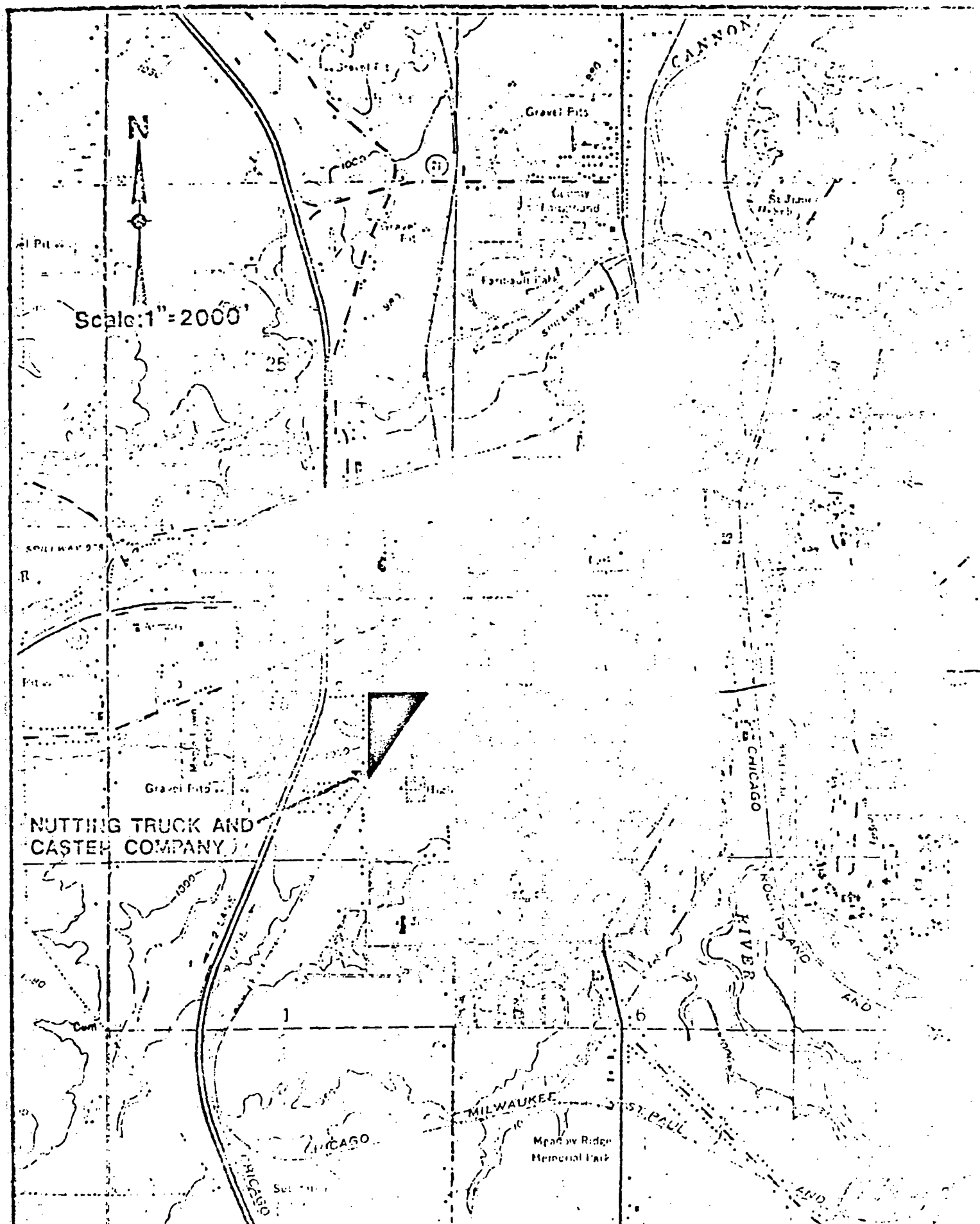
## II. DISCUSSION

This discussion is divided into seven sections, one providing a narrative discussion of the history underlying this Request for Response Action (Part II.A.); one for each of the four determinations that must be made before a Request for Response Action can be issued (Parts II.B. - II.E.); one describing the requested action and time table (Part II.F.); and finally one describing the MPCA's intentions upon issuance of the Request for Response Action (Part II.G.).

### A. History underlying this Request for Response Action

The Nutting Truck and Caster Company (Company) is located within the Faribault city limits and within one-half mile of the city's municipal wells. The two maps on the following pages depict these relationships. The Company began operations in Faribault in 1891. Over the past 92 years, the Company has produced a variety of hand pushable carts and caster wheels. Although chemical wastes have been produced for most of this period, the disposal location for these wastes is not documented prior to 1959.

Beginning in 1959, a pit on the Company property was used for disposal of waste chemicals and sludges. In April, 1979, the MPCA staff issued a Notice of Noncompliance to the Company regarding its disposal practices. By late 1980, the Company had excavated the waste chemicals and sludges and contaminated soils in the area of the pit and landspread them under an MPCA State Disposal System (SDS) permit for one time spreading of sludge. The pit area was backfilled and then paved. Analysis of water samples from three monitoring wells installed in 1979 near the pit on the Company property showed that ground water beneath the pit was contaminated with cadmium, lead, cyanide, methylene chloride, tri-chloroethylene and xylene. Two additional monitoring wells were installed in 1981 on Company property. A report by the Company's consultant dated October,



1981 concluded that the contamination of the ground water by these substances would remain very localized at the Company site with the exception of trichloroethylene.

Little immediate concern existed in late 1981 because prior sampling of the Faribault water supply system showed no contamination, the trichloroethylene contamination was thought to be confined to the drift/St. Peter aquifer, and no active drinking water wells in the St. Peter sandstone existed down gradient from the Company property. All five Faribault city wells are directly down gradient and within  $\frac{1}{2}$  mile, but draw from aquifers below a confining layer at the base of the St. Peter sandstone. All five city wells pump to the city reservoir where mixing occurs prior to distribution. Quarterly sampling of the Faribault water supply for trichloroethylene was recommended.

In an August 11, 1982 letter to the Company, the MPCA staff requested installation of three down gradient St. Peter sandstone wells located about 4-5 blocks from the Company site and the installation of one Prairie du Chien aquifer well. These wells would identify the extent of off-site contamination from the Company site. At a September 27, 1982 meeting with the Company, Rice County and the Minnesota Department of Health, the MPCA staff discussed the requirements listed in the August 11, 1982 letter. The Company said it could not afford to install additional wells.

The analysis of the samples from the Faribault city wells taken between September 29, 1982 and November 8, 1982 showed all five city wells to be contaminated with trichloroethylene as well as several other hazardous substances. When this information was forwarded to the MPCA in November, 1982, MPCA staff immediately informed the Company of the results in a November 15, 1982 conference telephone call and emphasized the need to proceed quickly with the investigation requested by the August 11 letter. In a November 22, 1982 letter to



the Company, the MPCA staff restated the requested actions from the August 11 letter and requested installation of an upgradient well in the St. Peter sandstone, an investigation as to whether and where waste disposal occurred on Nutting property other than in the identified pit, and that five parameters be examined in all future sampling. In a December 15, 1982 letter, the Company responded by stating its intention to continue monitoring of existing wells, but refused to install additional wells. In a January 6, 1983 letter to the Company, MPCA staff rejected this approach and restated the need for and urgency of determining the extent of off-site ground water contamination. In late January, 1983, the Company retained a consultant to produce additional information on ground water contamination at the Company site. In a March 2, 1983 letter to the Company, the MPCA staff stated that the proposed consultant study would not be adequate to determine off-site contamination and again restated the need for an adequate investigation. On March 22, 1983 the Company said it intended to proceed with its consultant's study even though it was not approved by the MPCA staff.

On April 5, 1983, the Minnesota Department of Health (MDH) provided the City of Faribault with an analytical data interpretation, a current assessment of the water supply, and recommendations for future action. The MDH recommended that 1) the city use a different pumping schedule utilizing uncontaminated wells first as a means to reduce contaminant levels, and 2) the city prepare a plan of action to reduce exposure to residents. The main thrust of the plan would be an examination of the feasibility of (a) constructing new wells and (b) treating existing well water. In an April 19, 1983 letter to the City of Faribault, the MPCA staff pointed out how serious a problem the municipal water system contamination is and that the MPCA requests of the Company were not excessive.



The Company submitted its consultant's May 4, 1983 Phase I report to the MPCA and requested that MPCA staff investigate several other potential sources of industrial waste in Faribault. The Company concluded that it is not a source of the 1,1-dichlorethylene, methylene chloride, or toluene contamination which exists in the city wells, and is not likely to be a major contributor of the trichloroethylene. In a June 24, 1983 letter to the Company, MPCA staff took issue with a number of conclusions in the May 4, 1983 Phase I report and stated that there still is insufficient data to determine off-site contamination.

On July 14, 1983, MPCA staff inspected a number of other industrial sites in Faribault in response to Nutting's suspicions that those industries might be ground water contamination sources. The staff has written follow up inquiry letters to four companies. The letters asked for information on the past disposal practices of each Company and, in the case of one Company which had a disposal pit for metal shavings, an analysis of the wastes at the bottom of the pit. Two companies have so far responded. They both have indicated that they do not have records of their past waste disposal practices. The Company with the waste pit has, however, agreed to sample the pit. The staff will continue to seek information on all of these sites.

On August 30, 1983 MPCA staff met with the Company and its consultant and discussed the Phase I report, explained the status of investigations at other Faribault industries, and explained MPCA staff intentions to proceed with a Request for Response Action. A September 8, 1983 letter to the Company summarizes that meeting. The most recent analyses from the Company monitoring wells reveal that trichloroethylene, a hazardous substance, as defined in Minnesota Laws 1983, chapter 121, section 2, subd. 8, is being released to the ground water from the Company property. Although the primary source of the trichloroethylene contaminant--the Company's disposal pit--has been removed, it is essential to determine the extent of trichloroethylene contamination which has and continues

to move off of the Company property and what, if any, remedial actions are necessary beyond the already accomplished pit excavation. Additional remedial actions will be necessary if extensive off-site ground water trichloroethylene contamination is found and especially if the Company is found to be a significant contributor to the municipal water supply trichloroethylene contamination. The Request for Response Action is necessary to ensure that the Company will undertake an adequate off-site investigation and, if necessary, a Remedial Action Feasibility Study. The hydrogeologic investigation is one which the Company has refused to perform despite repeated requests by MPCA staff over the past 13 months.

The MPCA staff has also submitted the Company facility for possible inclusion on the the U.S. Environmental Protection Agency (EPA) National Priority List. The score the MPCA staff computed was 51 points; the date of submittal was April 21, 1983. The EPA accepted this facility for inclusion on the National Priority List of August, 1983.

B. There is a release

As set out in Attachment 2, "release" is defined broadly in the Minnesota Superfund Act, ch. 121, section 2, subd. 15 to mean "any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment which occurred at a point in time or which continues to occur." [There are certain exceptions to this definition, none of which applies in this case. See Attachment 2.]

Information obtained from the Company consultant's reports dated December 10, 1979, April 28, 1980 and May 4, 1983, clearly demonstrates that there has been and continues to be a release within the meaning of the Minnesota Superfund Act, section 2, subd. 15. Prior to excavation and removal of the waste chemicals and sludges at the pit on the Company property, the

following known hazardous substances were found in the ground water directly beneath the pit in concentrations which exceeded the Safe Drinking Water Act's maximum contaminant levels or the U.S. Environmental Protection Agency's "Water Quality Criteria": cadmium, lead, cyanide, methylene chloride, trichloroethylene, and xylene. Following the removal of pit contents in 1980, trichloroethylene continues to be detected in very high concentrations in the ground water beneath the Company property. Thus, the known hazardous substance which continues to be released is trichloroethylene.

C. The release is from the facility.

As set out in Attachment 2, "facility" is defined broadly in the Minnesota Superfund Act, ch. 121, section 2, subd. 5 to mean

- (a) Any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, or aircraft;
- (b) Any watercraft of any description, or other artificial contrivance used or capable of being used as a means of transportation on water; or
- (c) Any site or area where a hazardous substance, or a pollutant or contaminant, has been deposited, stored, disposed of, or placed, or otherwise come to be located.

"Facility" does not include any consumer product in consumer use.

Under this definition, the area in and around the Company property constitutes a facility within the meaning of the Minnesota Superfund Act, section 2, subd. 5. Evidence that the release came from this facility is contained in other reports, letters, and documents within MPCA files.

D. At a minimum, the release involves hazardous substances.

As set out in Attachment 2, "hazardous substance" is defined broadly in the Minnesota Superfund Act, ch. 121, section 2, subd. 8, to mean:

- (a) Any commercial chemical designated pursuant to the Federal Water Pollution Control Act, under 33 U.S.C. Section 1321(b)(2)(A);
- (b) Any hazardous air pollutant listed pursuant to the Clean Air Act, under 42 U.S.C. Section 7412; and
- (c) Any hazardous waste.

"Hazardous substance" does not include natural gas, natural gas liquids, liquefied natural gas, synthetic gas usable for fuel or mixtures of such synthetic gas and natural gas, nor does it include petroleum, including crude oil or any fraction thereof which is not otherwise a hazardous waste.

Hazardous waste [which is included as a "hazardous substance" under subd. 8(c)] is defined in the Minnesota Superfund Act, ch. 121, section 2, subd. 9, to mean

- (a) Any hazardous waste as defined in section 116.06, subdivision 13, and any substance identified as a hazardous waste pursuant to the rules adopted by the agency under section 116.07; and
- (b) Any hazardous waste as defined in the Resource Conservation and Recovery Act, under 42 U.S.C. Section 6903, which is listed or has the characteristics identified under 42 U.S.C. Section 6921, not including any hazardous waste the regulation of which has been suspended by act of Congress.

Substances that are defined as hazardous under Subd. 8(c) of these definitions have been found at the Company facility. The primary hazardous substance of concern at this time is trichloroethylene, which has been and continues to be found in high concentrations in the ground water at the facility. Other hazardous substances which have been found in the ground water at the facility include cyanide, lead, cadmium, methylene chloride, trichloroethylene and xylene.

E. The persons to whom the response requests are directed are responsible parties.

As set out in Attachment 2, "responsible person" 2/ is generally defined in the Minnesota Superfund Act, ch. 121, section 3, subd. 1, to include persons who

- (a) Owned or operated the facility: (1) when the hazardous substances, or pollutant or contaminant, was placed or came to be located in or on the facility; (2) when the hazardous substance, or pollutant or contaminant, was located in or on the facility but before the release; or (3) during the time of the release or threatened release;
- (b) Owned or possessed the hazardous substance, or pollutant or contaminant, and arranged, by contract, agreement or otherwise, for the disposal, treatment or transport for disposal or treatment of the hazardous substance, or pollutant or contaminant; or
- (c) Knew or reasonably should have known that waste he accepted for transport to a disposal or treatment facility contained a hazardous substance, or pollutant or contaminant, and either selected the facility to which it was transported or disposed of it in a manner contrary to law.

The Nutting Truck and Caster Company is a responsible party under the Minnesota Superfund Act, section 3, subd. 1(a), because the Company owned and operated the facility when the hazardous substance was placed or came to be placed in or on the facilities and at the time of the release, and subd. 1(b), because the Company owned or possessed the hazardous substance.

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2/ The Minnesota Superfund Act, in section 17, refers to "responsible parties." There is, however, no definition of "responsible parties" but is a definition of "responsible persons" in the Act. That definition should be considered to apply each time the Minnesota Superfund Act refers to either "responsible persons" or "responsible parties."

F. The requested response actions are reasonable and necessary.

The attached Request for Response Action describes a series of actions to be taken at or near the Company facility. These actions are reasonable and necessary to protect the public health, welfare, or the environment. These actions are designed to gather information that will allow adequate identification, assessment, choice, and design of remedies necessary to mitigate contamination of ground water at and around the Company facility.

The actions are more fully described in the attached Request for Response Action and include:

1. An investigation of the nature and extent of soil and groundwater contamination at and around the Company property.
2. A report which documents the investigation and makes a recommendation to MPCA staff regarding the need for a Remedial Action Feasibility Study.
3. Prompt initiation and timely completion of a Remedial Action Feasibility Study, if the MPCA Director determines that a Remedial Action Feasibility is needed, to determine the alternatives available to prevent contamination of private wells and/or to remedy existing or future contamination of the Faribault city water system.

The Remedial Investigation and the Remedial Action Feasibility Study specified in the Request for Response Action are reasonable and necessary to provide the information required to implement timely and adequate removal and remedial action at and near the Company property.

The time schedules established for beginning and completing the Remedial Investigation and the Remedial Action Feasibility Study are reasonable given that they are achievable in the period stated. The staff has evaluated

the length of time it takes to accomplish the actions specified in the Request for Response Action, has considered the urgency of the situation, and has attempted to establish an expedited schedule for completing these actions. The time schedule established reflects these concerns.

G. The Actions Taken by the MPCA Staff After a Request for Response Action is Issued.

In this section of the Board Item, the MPCA staff set out their view of the events that follow the issuance of certain Requests for Response Action by the MPCA. The MPCA staff believe that an explanation of the manner in which the MPCA staff is implementing the Minnesota Superfund Act will assist both the MPCA Board and the recipients of Requests for Response Action in determining what constitutes an adequate response to Requests for Response Action.

Since the Minnesota Superfund Act was enacted, it has been and continues to be the opinion of the MPCA staff that, where possible, the MPCA should attempt to obtain from responsible persons a negotiated settlement on the removal and remedial actions that are needed to be undertaken to clean up a hazardous waste site. In the MPCA staff's view, the issuance of a Request for Response Action should not be considered the end to negotiations, but instead a useful and important step through which negotiations can be brought to a head. The MPCA staff further believe that the removal and remedial action specified in Requests for Response Action provide a sound basis for such negotiations.

In the MPCA staff's view, the procedure is as follows: The MPCA issues a Request for Response Action. Either (a) responsible parties and the MPCA staff negotiate and reach an agreement resolving the issues raised in the Request for Response Action or (1) responsible parties refuse to undertake

the actions specified in the Request for Response Action. To the extent negotiations are fruitful [situation (a), above], the MPCA staff will return to the MPCA Board with an appropriate recommendation. If, on the other hand, responsible parties refuse to enter into negotiations or negotiations are not fruitful [situation (b) above], the MPCA staff will bring the matter back to the MPCA Board for a determination that the responsible person will not take the actions requested within the established time periods.

The Requests for Response Action that have been issued to date do not explicitly provide for negotiations. To make it clear that the MPCA is willing to consider amendments to the terms of the removal and remedial action set out in the Request for Response Action [to be set forth in a negotiated Consent Order], the MPCA staff recommend that, where appropriate, Requests for Response Action issued in the future explicitly include a period for negotiating an agreement with the MPCA staff. (See Sections I.D. and I.E. of the attached Request for Response Action.)

### III. CONCLUSIONS

The Company property located at Faribault, Minnesota, is a facility within the meaning of Minnesota Laws 1983, chapter 121, section 2, subd. 5.

The wastes and substances found or disposed at the Company facility are hazardous substances within the meaning of Minnesota Laws 1983, chapter 121, section 2, subd. 8 and 9.

There have been one or more releases and continues to be a release of these hazardous substances at the Company facility within the meaning of Minnesota Laws 1983, chapter 121, section 2, subd. 15.



With respect to those releases, the Nutting Truck and Caster Company is a responsible person within the meaning of Minnesota Laws 1983, chapter 121, section 3, subd. 1(a) and (b).

The actions requested in the attached proposed Request for Response Action are reasonable and necessary to protect the public health or welfare or the environment.

The schedules for the requested actions in the attached proposed Request for Response Action are reasonable taking into account the urgency of the actions for protecting the public health or welfare or the environment.

The MPCA staff intends to continue to negotiate with the Company on the Remedial Investigation and Remedial Feasibility Study that are needed to be undertaken at the Company facility and, through those negotiations, will attempt to bring a negotiated Consent Order to the MPCA Board with an appropriate recommendation.

#### IV. RECOMMENDATION

The MPCA staff recommends that the MPCA Board adopt the suggested staff resolution on the following page.

Suggested Staff Resolution

BE IT RESOLVED, that the Minnesota Pollution Control Agency finds that:

1. The Company property located at Faribault, Minnesota, is a facility within the meaning of Minnesota Laws 1983, chapter 121, section 2, subd. 5.
2. The wastes and substances found or disposed at the Company facility are hazardous substances within the meaning of Minnesota Laws 1983, chapter 121, section 2, subd. 8 and 9.
3. There have been one or more releases and continues to be a release of these hazardous substances at the Company facility within the meaning of Minnesota Laws 1983, chapter 121, section 2, subd. 15.
4. With respect to those releases, the Nutting Truck and Caster Company is a responsible person within the meaning of Minnesota Laws 1983, chapter 121, section 3, subd. 1(a) and (b).
5. The actions requested in the attached Request for Response Action are reasonable and necessary to protect the public health or welfare or the environment.

6. The schedules for the requested actions in the attached proposed Request for Response Action are reasonable taking into account the urgency of the actions for protecting the public health or welfare or the environment.

BE IT FURTHER RESOLVED that the Minnesota Pollution Control Agency issues the attached Request for Response Action to the Nutting Truck and Caster Company. The Chairperson and the Director are authorized to execute the attached Request for Response Action on behalf of the Minnesota Pollution Control Agency.

## DEFINITIONS

1. RELEASE, is defined in section 2, subd. 15 of the Minnesota Superfund Act as follows:

"Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment which occurred at a point in time or which continues to occur.

"Release" does not include:

(a) Emissions from the engine exhaust of a motor vehicle, rolling stock, aircraft, watercraft, or pipeline pumping station engine;

(b) Release of source, byproduct, or special nuclear material from a nuclear incident, as those terms are defined in the Atomic Energy Act of 1954, under 42 U.S.C. Section 2014, if the release is subject to requirements with respect to financial protection established by the federal nuclear regulatory commission under 42 U.S.C. Section 2210;

(c) Release of a source, byproduct or special nuclear material from any processing site designated pursuant to the Uranium Mill Tailings Radiation Control Act of 1978, under 42 U.S.C. Section 7912(a)(1) or 7942(a); or

(d) Any release resulting from the application of fertilizer or agricultural or silvicultural chemicals, or disposal of emptied pesticide containers or residues from a pesticide as defined in section 18A.21, subdivision 25.

2. FACILITY, is defined in section 2, subd. 5 of the Minnesota Superfund Act as follows:

"Facility" means

(a) Any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, or aircraft;

(b) Any watercraft of any description, or other artificial contrivance used or capable of being used as a means of transportation on water; or

(c) Any site or area where a hazardous substance, or a pollutant or contaminant, has been deposited, stored, disposed of, or placed, or otherwise come to be located.

"Facility" does not include any consumer product in consumer use.

3. POLLUTANT OR CONTAMINANT, is defined in section 2, subd.

13, of the Minnesota Superfund Act as follows:

"Pollutant or contaminant" means any element, substance, compound, mixture, or agent, other than a hazardous substance, which after release from a facility and upon exposure of, ingestion, inhalation, or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, will or may reasonably be anticipated to cause death, disease, behavioral abnormalities, cancer, genetic mutation, physiological malfunctions (including malfunctions in reproduction) or physical deformations, in the organisms or their offspring.

"Pollutant or contaminant" does not include natural gas, natural gas liquids, liquefied natural gas, synthetic gas usable for fuel, or mixtures of such synthetic gas and natural gas.

4. HAZARDOUS SUBSTANCE" is defined in section 2, subd. 8,

of the Minnesota Superfund Act as follows:

"Hazardous substance" means:

(a) Any commercial chemical designated pursuant to the Federal Water Pollution Control Act, under 33 U.S.C. Section 1321(b)(2)(A);

(b) Any hazardous air pollutant listed pursuant to the Clean Air Act, under 42 U.S.C. Section 7412; and

(c) Any hazardous waste.

"Hazardous substance" does not include natural gas, natural gas liquids, liquefied natural gas, synthetic gas usable for fuel, or mixtures of such synthetic gas and natural gas.

and natural gas, nor does it include petroleum, including crude oil or any fraction thereof which is not otherwise a hazardous waste.

5. "HAZARDOUS WASTE" is defined in section 2, subd. 9, of the Minnesota Superfund Act as follows:

"Hazardous waste" means:

(a) Any hazardous waste as defined in section 116.06, subdivision 13, any any substance identified as a hazardous waste pursuant to rules adopted by the agency under section 116.07; and

(b) Any hazardous waste as defined in the Resource Conservation and Recovery Act, under 42 U.S.C. Section 6903, which is listed or has the characteristics identified under 42 U.S.C. Section 6921, not including any hazardous waste the regulation of which has been suspended by act of Congress.

6. "RESPONSIBLE PERSON" is defined in section 3 of the Minnesota Superfund Act as follows:

Subdivision 1. [GENERAL RULE.] For the purposes of sections 1 to 20, and except as provided in subdivisions 2 and 3, a person is responsible for a release or threatened release of a hazardous substance, or a pollutant or contaminant, from a facility if the person:

(a) Owned or operated the facility (1) when the hazardous substance, or pollutant or contaminant, was placed or came to be located in or on the facility; (2) when the hazardous substance, or pollutant or contaminant, was located in or on the facility but before the release; or (3) during the time of the release or threatened release;

(b) Owned or possessed the hazardous substance, or pollutant or contaminant, and arranged, by contract, agreement or otherwise, for the disposal, treatment or transport for disposal or treatment of the hazardous substance, or pollutant or contaminant; or

(c) Knew or reasonably should have known that waste he accepted for transport to a disposal or treatment facility contained a hazardous substance, or pollutant or contaminant, and either selected the facility to which it was transported or disposed of it in a manner contrary to law.

Subdivision 2. [EMPLOYEES AND EMPLOYERS.] When a person who is responsible for a release or threatened release as provided in subdivision 1 is an employee who is acting in the scope of his employment:

(a) The employee is subject to liability under section 4 or 5 only if his conduct with respect to the hazardous substance was negligent under circumstances in which he knew that the substance was hazardous and that his conduct, if negligent, could result in serious harm.

(b) His employer shall be considered a person responsible for the release or threatened release and is subject to liability under section 4 or 5 regardless of the degree of care exercised by the employee.

Subdivision 3. [OWNER OF REAL PROPERTY.] An owner of real property is not a person responsible for the release or threatened release of a hazardous substance from a facility in or on the property unless that person:

(a) was engaged in the business of generating, transporting, storing, treating, or disposing of a hazardous substance at the facility or disposing of waste at the facility, or knowingly permitted others to engage in such a business at the facility;

(b) knowingly permitted any person to make regular use of the facility for disposal of waste;

(c) knowingly permitted any person to use the facility for disposal of a hazardous substance;

(d) knew or reasonably should have known that a hazardous substance was located in or on the facility at the time right, title, or interest in the property was acquired by the person and engaged in conduct by which he associated himself with the release; or

(e) took action which significantly contributed to the release after he knew or reasonably should have known that a hazardous substance was located in or on the facility.

For the purpose of clause (d), a written warranty, receipt, or other document, which is set forth in an instrument conveying any right, title or interest in the real property and which is executed by the person conveying the right, title or interest, or which is set forth in any memorandum of any such instrument executed

for the purpose of recording, is admissible as evidence of whether the person acquiring any right, title, or interest in the real property knew or reasonably should have known that a hazardous substance was located in or on the facility.

Any liability which accrues to an owner of real property under sections 1 and 15 does not accrue to any other person who is not an owner of the real property merely because the other person holds some right, title, or interest in the real property.

An owner of real property on which a public utility easement is located is not a responsible person with respect to any release caused by any act or omission of the public utility which holds the easement in carrying out the specific use for which the easement was granted.



STATE OF MINNESOTA

COUNTY OF RAMSEY

MINNESOTA POLLUTION

CONTROL AGENCY

In the Matter of the  
Nutting Truck  
and Caster site in  
Faribault, Minnesota

REQUEST FOR  
RESPONSE ACTION

To: The Nutting Truck and Caster Company

I. NOTIFICATION OF OBLIGATION TO TAKE RESPONSE ACTION

A. This document is a Request for Response Action issued by the Minnesota Pollution Control Agency (MPCA) as authorized by Minnesota Laws 1983, chapter 121, sections 17 and 18.

B. YOU ARE HEREBY NOTIFIED that the MPCA has made the following determinations:

1. the Nutting Truck and Caster Company (Company) property located at Faribault, Minnesota is a facility within the meaning of Minnesota Laws 1983, chapter 121, section 2, subd. 5;

2. the wastes and substances found or disposed of at the Company facility are hazardous substances within the meaning of Minnesota Laws 1983, chapter 121, section 2, subd. 8 and 9;

3. there have been and continue to be one or more releases of these hazardous substances from the Company facility within the meaning of Minnesota Laws 1983, chapter 121, section 2, subd. 15; and,

4. with respect to those releases from the Company facility, the Nutting Truck and Caster Company is a responsible person within the meaning of Minnesota Laws 1983, chapter 121, section 3, subd. 1, paragraphs a and b.

C. Having made these determinations, the MPCA formally requests that you take the response action described in Section II., below. A timetable for beginning and completing the actions is set out in Section III. The reasons for the requested response action are set out in Section IV. Section V. describes the intention of the MPCA to take action if you fail to take the requested response action within the timetable set out. Section V. also describes the consequences of failure to satisfactorily respond to this Request for Response Action.

D. A period of sixty (60) days has been provided after the date this Request for Response Action is issued by the MPCA to allow the Company to meet with MPCA staff. The purpose of this time period is to provide for negotiations on the specific terms of the requested actions and the time periods within which these actions must be completed. By October 15, 1983, the Company must notify the MPCA staff of its intention to meet with the MPCA staff. Failure to notify the MPCA staff by October 15, 1983 of the Company's intention to meet with the MPCA staff may result in a determination by the MPCA that the Company is unwilling to take adequate response actions in this case.

E. If, following negotiations between the Company and the MPCA staff, an agreement between the Company and the MPCA staff is reached the MPCA staff will present the agreement to the MPCA. The agreement, if approved by the MPCA, will control the response actions to be taken at and around the facilities. If no agreement is reached within the allotted time period the matter will be referred to the MPCA for a Determination of Inadequate Response. Upon determining that a responsible person has not adequately responded, the MPCA may authorize litigation to require the responsible party to take the necessary actions and/or to reimburse the state for costs it incurs if it elects to take the necessary actions. These steps are more fully described in Section V.

## II. REQUESTED RESPONSE ACTION

The MPCA has determined (1) that the following actions constitute removal or remedial actions within the meaning of Minnesota Laws 1983, chapter 121, section 2, subd. 16 and 17 and (2) that these removal or remedial actions are reasonable and necessary to protect the public health, welfare or the environment. Consequently, the MPCA hereby formally requests that you take the following actions within the timetables established in Section III.

### A. Remedial Investigation

The Company shall prepare and submit a remedial investigation proposal for MPCA Director review and approval. This proposal shall include, at a minimum:

#### 1. Drift/St. Peter Water Quality

The Company shall identify the impact that the Company's disposal practices have had on the drift/St. Peter aquifer. The first step of this study shall be the installation of at least one upgradient and three downgradient monitoring wells in the drift/St. Peter aquifer. If the analysis of samples from these wells indicates a need for additional wells, the Company shall propose well locations to the MPCA Director and, upon MPCA Director approval, install additional wells.

#### 2. Prairie du Chien-Jordan Water Quality

The Company shall identify the impact that the Company's disposal practices have had on the Prairie du Chien-Jordan aquifer. Once the contamination plume(s) in the drift/St. Peter aquifer is (are) adequately identified, the Company shall install at least one monitoring well in the Prairie du Chien-Jordan aquifer. This delayed installation is intended to allow for proper location of the well. If this well is not located very near a St. Peter aquifer well, a new St. Peter well shall be installed next to the Prairie du Chien-Jordan well.

The monitoring wells required in II. A. 1 and 2 shall be constructed so that representative water samples may be obtained. Well screens in the St. Peter aquifer wells shall be set from the underlying confining layer up to a point which fully penetrates the aquifer. The Company shall secure written approval from the MPCA Director regarding well construction and locations prior to well installation.

All wells shall be sampled for the following parameters:

Total organic carbon

Total volatiles

Total dissolved solids

Cyanide

Total metals

The Company shall propose a sampling schedule and submit it for MPCA Director approval.

3. Confining Layer Investigation

The Company shall characterize the confining layer below the St. Peter sandstone. Core samples shall be retrieved to adequately analyze this layer. A plan for investigation of the confining layer shall be submitted for MPCA Director review and approval prior to commencing field work.

4. Source Investigation

The Company shall determine whether wastes have been disposed of on other portions of Company property. This investigation may be accomplished by taking soil borings or by trenching and is prompted by documented contamination in an up-gradient well on the south tip of the Company's property. The Company shall submit a source investigation proposal to the MPCA Director for review and approval.

B. Remedial Investigation Report

The Company shall prepare and submit a report which documents the investigations completed under Part A above. This report shall (a) identify the extent of the contamination from the Company facility in the drift/St. Peter and Prairie du Chien/Jordan aquifers; (b) characterize the confining layer below the St. Peter sandstone; and (c) present results of the source investigation. The report shall include the Company's assessment of the impact of the contamination on current and future ground water use and the Company's recommendation regarding the need for a Remedial Action Feasibility Study.

C. Remedial Action Feasibility Study

Once the extent of ground water contamination from the Company facility is known, especially its relationship to the Faribault municipal well contamination, it may be necessary for the Company to prepare a Remedial Action Feasibility Study. The MPCA staff will review the recommendations under Part B above and the MPCA Director will determine whether a Feasibility Study is necessary. If one is necessary, the Feasibility Study shall identify and assess remedies to prevent contamination of private wells and the City of Faribault's water supply. The Company shall examine the feasibility of as many alternative remedial actions as are technologically feasible in this

#### D. Submittals

All submittals and notifications to the MPCA Director required by this Request for Response Action shall be addressed to Edward Meyer, Project Leader, Division of Solid and Hazardous Waste, Minnesota Pollution Control Agency, 1935 West County Road B-2, Roseville, Minnesota, 55113. He shall also be provided progress reports by the fifteenth day of each month. The progress reports shall describe activities conducted pursuant to this Request for Response Action during the preceding month and shall describe activities planned for at least the next thirty day period.

#### III. TIMETABLE

Taking into account the urgency of the actions for protecting the public health and welfare and the environment, the MPCA has determined that the following schedule constitutes a reasonable timetable for negotiations and for beginning and completing the above requested actions. This timetable is designed to complete all actions at the Company facility relating to the Remedial Investigation and a Remedial Action Feasibility Study.

##### A. Negotiations

Notification of intent to negotiate.	October 15, 1983
End of negotiation period.	November 28, 1983

##### B. Remedial Investigation

Retain consultant.	By December 5, 1983
Submit proposals for Remedial Investigation.	By December 19, 1983

##### Source Investigation

Complete exploration for additional waste/disposal locations.	Within 4 weeks of MPCA Director approval of proposal.
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##### Drift/St. Peter Water Quality

Submit proposed well locations to MPCA for approval.	By January 2, 1984
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MPCA response to proposed well location-- approve, modify, or reject.	Within two weeks of receipt.
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Construct Drift/St. Peter wells.	Begin within 4 weeks of approval.
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Analyze samples.	Complete analysis within 4 weeks of well completion.
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Construct additional wells if needed.	Repeat of 4 previous steps.
---------------------------------------	-----------------------------

Confining Layer Investigation

Analyze confining layer below St. Peter Formation.

Complete within 4 weeks of well completion.

Submit data and plume identification report and confining layer analysis to MPCA for review.

Within 3 weeks of confining layer analysis.

MPCA response to report.

Within 3 weeks of receipt.

Prairie du Chien/Jordan Water Quality

Submit Prairie du Chien-Jordan (PDC-J) well location to MPCA for approval.

Within 3 weeks of report acceptable to MPCA regarding St. Peter plume identification.

MPCA response to proposed Prairie du Chien-Jordan well location.

Within 2 weeks of receipt.

Install PDC-J well (and possibly a nearby St. Peter well).

Begin within 2 weeks of response.

Analyze samples.

Complete analyses within 4 weeks of well completion.

Submit data and plume identification to MPCA for review.

Within 2 weeks of receipt of analyses.

MPCA response.

Within 2 weeks of receipt.

Construct additional well(s) if needed.

Repeat 6 previous steps

C. Remedial Investigation Report

Prepare and Submit Remedial Investigation Report to MPCA.

Within 4 weeks of MPCA response.

MPCA decision regarding need for feasibility study.

Within 3 weeks of receipt of report.

D. Remedial Action Feasibility Study.

Prepare and submit draft feasibility study.

Within 8 weeks of MPCA decision.

Submit final feasibility study.

Within 4 weeks of receipt of MPCA comments.

The MPCA Director shall be promptly notified of any anticipated or actual failure to comply with the dates or other items of this Request for Response Action. Such notice shall include the reasons for the noncompliance and steps proposed for a return to compliance or alternative actions proposed to comply with the intent of this Request for Response Action. The MPCA Director may accept or modify and accept the proposed compliance measures if she determines that such measures are adequate and that the need for the modifications is not a result of failure within the control of the responsible parties.

#### IV. REASONS FOR REQUESTED ACTION

The Company has been in operation at its present location since 1891. In its production of a variety of wheel casters and hand pushable carts, it has used various solvents and strippers. Prior to 1959, the disposal location for wastes is not documented. After 1959, these chemicals were routed by a drainage system to a pit on the Company's property. The use of the pit for waste disposal continued up through 1979. In 1980, the sludge in the pit was excavated and disposed of under a one time permit from the MPCA. With the source of ground water contamination removed, with no contamination evident in the Faribault city wells, and with the Company's financial concerns, the Company facility was given a lower priority in relation to other hazardous waste sites. When trichloroethylene and other contaminants were discovered in November, 1982 in the Faribault city wells, the MPCA immediately requested that the Company determine the extent of the contaminant plume which was leaving its site. The Company performed a limited hydrogeologic study, but has refused to install the monitoring wells which are necessary to determine the extent of contamination in the drift/St. Peter and the Prairie du Chien-Jordan aquifers. Further, the MPCA staff is not in agreement with the findings and conclusions of that study (completed in May, 1983). Given the very high concentrations of trichloroethylene in the shallow monitoring wells on Company property, the investigation is reasonable and necessary to provide the information required to reach a timely decision on the need for a Remedial Action Feasibility Study and, if necessary, to undertake that Feasibility Study.

V. MPCA INTENTION TO TAKE ACTION AND CONSEQUENCES OF RESPONSIBLE PERSON'S FAILURE TO TAKE REQUESTED ACTION

A. YOU ARE HEREBY NOTIFIED that if responsible persons fail to take the requested actions in an adequate or timely fashion, the responsible persons may be subject to the following actions:

1. the MPCA may undertake or complete the requested response action and seek reimbursement from responsible persons for all costs associated with such action; or
2. the responsible person may be subject to an action to compel performance of the requested response action or for injunctive relief to enjoin the release or threatened release.

In either case responsible persons who fail to take the response actions requested by the MPCA in an adequate or timely fashion may be required to pay a civil penalty in an amount to be determined by the court of up to \$20,000 per day for each day that the responsible person fails to take reasonable and necessary response actions.

B. YOU ARE HEREBY FURTHER NOTIFIED that all responsible persons, whether or not they complete the requested response action, may be required to:

1. reimburse the MPCA for all reasonable and necessary expenses it incurs, including all response costs, and administrative and legal expenses, in the investigation and/or clean up of the facilities; and,
2. pay for any damages to the air, water, or wildlife resulting from the release of a hazardous substance, pollutant or contaminant.

C. YOU ARE HEREBY FURTHER NOTIFIED that if you fail to take the requested response action, the MPCA intends to take one or more of the actions described in V.A. and B.

\_\_\_\_\_  
Cynthia Jepsen, Chairperson

\_\_\_\_\_  
Sandra S. Gardebring, Executive Director

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Minnesota Pollution Control Agency

## DEFINITIONS

1. "RELEASE", is defined in Minn. Stat. § 115B.02, Subd. 15 as follows:

"Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment which occurred at a point in time or which continues to occur.

"Release" does not include:

(a) Emissions from the engine exhaust of a motor vehicle, rolling stock, aircraft, watercraft, or pipeline pumping station engine;

(b) Release of source, byproduct, or special nuclear material from a nuclear incident, as those terms are defined in the Atomic Energy Act of 1954, under 42 United States Code § 2014, if the release is subject to requirements with respect to financial protection established by the federal nuclear regulatory commission under 42 United States Code § 2210;

(c) Release of a source, byproduct or special nuclear material from any processing site designated pursuant to the Uranium Mill Tailings Radiation Control Act of 1978, under 42 United States Code § 7912(a)(1) or 7942(a); or

(d) Any release resulting from the application of fertilizer or agricultural or silvicultural chemicals, or disposal of emptied pesticide containers or residues from a pesticide as defined in § 18A.21, Subd. 25.

2. "FACILITY", is defined in Minn. Stat. § 115B.02, Subd. 5 as follows:

"Facility" means

(a) Any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, or aircraft;



(b) Any watercraft of any description, or other artificial contrivance used or capable of being used as a means of transportation on water; or

(c) Any site or area where a hazardous substance, or a pollutant or contaminant, has been deposited, stored, disposed of, or placed, or otherwise come to be located.

"Facility" does not include any consumer product in consumer use.

3. "POLLUTANT OR CONTAMINANT", is defined in Minn. Stat. § 115B.02,

Subd. 13 as follows:

"Pollutant or contaminant" means any element, substance, compound, mixture, or agent, other than a hazardous substance, which after release from a facility and upon exposure of, ingestion, inhalation, or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, will or may reasonably be anticipated to cause death, disease, behavioral abnormalities, cancer, genetic mutation, physiological malfunctions (including malfunctions in reproduction) or physical deformations, in the organisms or their offspring.

"Pollutant or contaminant" does not include natural gas, natural gas liquids, liquefied natural gas, synthetic gas usable for fuel, or mixtures of such synthetic gas and natural gas.

4. "HAZARDOUS SUBSTANCE" is defined in Minn. Stat. § 115B.02,

Subd. 8 as follows:

"Hazardous substance" means:

(a) Any commercial chemical designated pursuant to the Federal Water Pollution Control Act, under 33 United States Code § 1321(b)(2)(A);

(b) Any hazardous air pollutant listed pursuant to the Clean Air Act, under 42 United States Code § 7412; and

(c) Any hazardous waste.

"Hazardous substance" does not include natural gas, natural gas liquids, liquefied natural gas, synthetic gas usable for fuel or mixtures of such synthetic gas

and natural gas, nor does it include petroleum, including crude oil or any fraction thereof which is not otherwise a hazardous waste.

5. "HAZARDOUS WASTE" is defined in Minn. Stat. § 115B.02, Subd. 9 as follows:

"Hazardous waste" means:

(a) Any hazardous waste as defined in § 116.06, Subd. 13, and any substance identified as a hazardous waste pursuant to rules adopted by the agency under § 116.07; and

(b) Any hazardous waste as defined in the Resource Conservation and Recovery Act, under 42 United States Code § 6903, which is listed or has the characteristics identified under 42 United States Code § 6921, not including any hazardous waste the regulation of which has been suspended by act of Congress.

6. "RESPONSIBLE PERSON" is defined in Minn. Stat. § 115B.03 as follows:

Subd. 1. General Rule. For the purposes of §§ 115B.01, to 115B.20, and except as provided in Subds. 2 and 3, a person is responsible for a release or threatened release of a hazardous substance, or a pollutant or contaminant, from a facility if the person:

(a) Owned or operated the facility: (1) when the hazardous substance, or pollutant or contaminant, was placed or came to be located in or on the facility; (2) when the hazardous substance, or pollutant or contaminant, was located in or on the facility but before the release; or (3) during the time of the release or threatened release;

(b) Owned or possessed the hazardous substance, or pollutant or contaminant, and arranged, by contract, agreement or otherwise, for the disposal, treatment or transport for disposal or treatment of the hazardous substance, or pollutant or contaminant; or

(c) Knew or reasonably should have known that waste he accepted for transport to a disposal or treatment facility contained a hazardous substance, or pollutant or contaminant, and either selected the facility to which it was transported or disposed of it in a manner contrary to law.

Subd. 2. Employees and Employers. When a person who is responsible for a release or threatened release as provided in subdivision 1 is an employee who is acting in the scope of his employment:

(a) The employee is subject to liability under § 115B.04 or 115B.05 only if his conduct with respect to the hazardous substance was negligent under circumstances in which he knew that the substance was hazardous and that his conduct, if negligent, could result in serious harm.

(b) His employer shall be considered a person responsible for the release or threatened release and is subject to liability under § 115B.04 or 115B.05 regardless of the degree of care exercised by the employee.

Subd. 3. Owner of Real Property. An owner of real property is not a person responsible for the release or threatened release of a hazardous substance from a facility in or on the property unless that person:

(a) was engaged in the business of generating, transporting, storing, treating, or disposing of a hazardous substance at the facility or disposing of waste at the facility, or knowingly permitted others to engage in such a business at the facility;

(b) knowingly permitted any person to make regular use of the facility for disposal of waste;

(c) knowingly permitted any person to use the facility for disposal of a hazardous substance;

(d) knew or reasonably should have known that a hazardous substance was located in or on the facility at the time right, title, or interest in the property was first acquired by the person and engaged in conduct by which he associated himself with the release; or

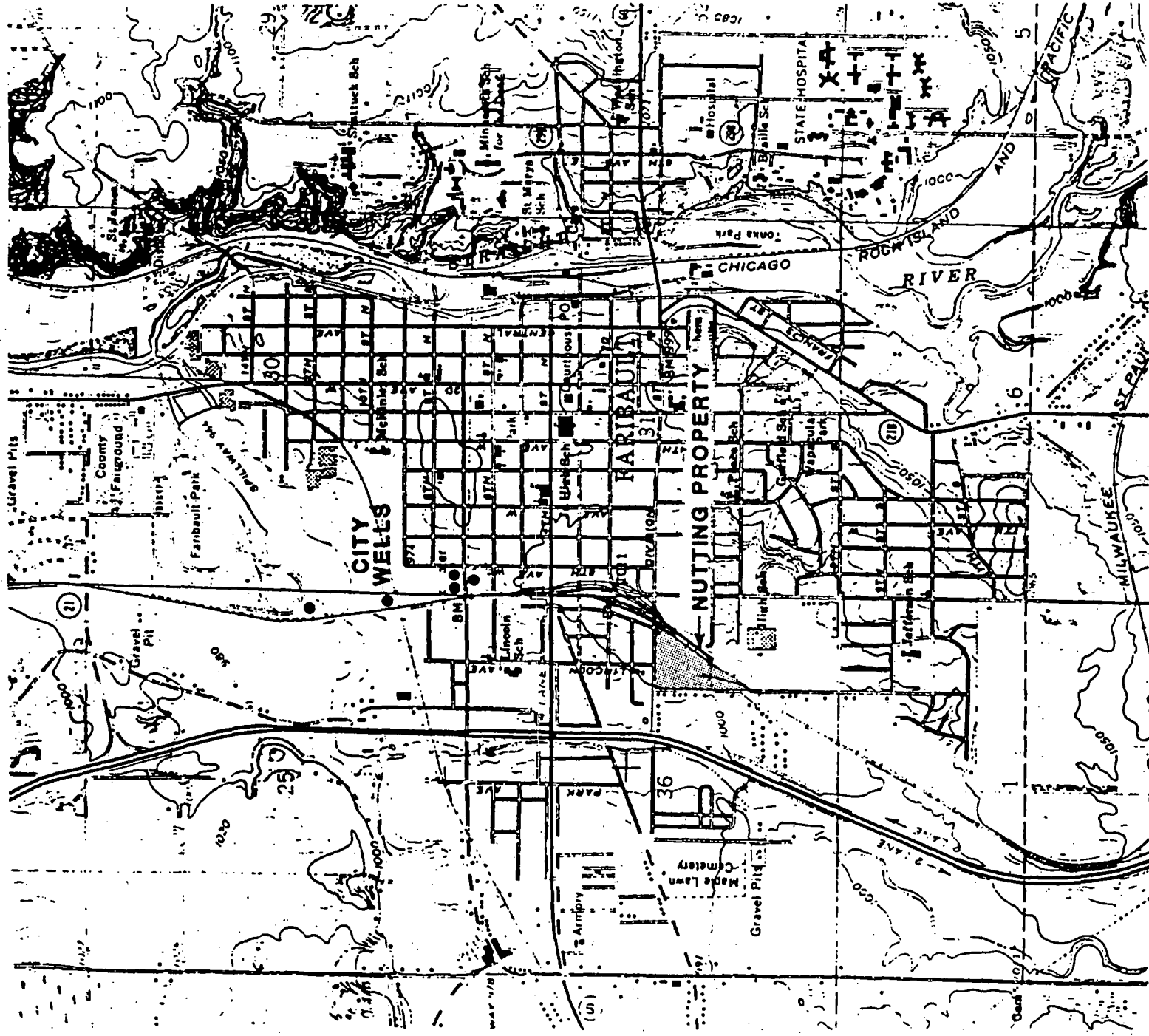
(e) took action which significantly contributed to the release after he knew or reasonably should have known that a hazardous substance was located in or on the facility.

For the purpose of clause (d), a written warranty, representation, or undertaking, which is set forth in an instrument conveying any right, title or interest in the real property and which is executed by the person conveying the right, title or interest, or which is set forth in any memorandum of any such instrument executed

for the purpose of recording, is admissible as evidence of whether the person acquiring any right, title, or interest in the real property knew or reasonably should have known that a hazardous substance was located in or on the facility.

Any liability which accrues to an owner of real property under §§ 115B.01 to 115B.15 does not accrue to any other person who is not an owner of the real property merely because the other person holds some right, title, or interest in the real property.

An owner of real property on which a public utility easement is located is not a responsible person with respect to any release caused by any act or omission of the public utility which holds the easement in carrying out the specific use for which the easement was granted.



0 2000

Scale in Feet



# LOCATION MAP

The Nutting Company  
Faribault, Minnesota

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(b) Owned or possessed the hazardous substance, or pollutant or contaminant, and arranged, by contract, agreement or otherwise, for the disposal, treatment or transport for disposal or treatment of the hazardous substance, or pollutant or contaminant; or

(c) Knew or reasonably should have known that waste he accepted for transport to a disposal or treatment facility contained a hazardous substance, or pollutant or contaminant, and either selected the facility to which it was transported or disposed of it in a manner contrary to law.



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(b) His employer shall be considered a person responsible for the release or threatened release and is subject to liability under § 115B.04 or 115B.05 regardless of the degree of care exercised by the employee.

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(a) was engaged in the business of generating, transporting, storing, treating, or disposing of a hazardous substance at the facility or disposing of waste at the facility, or knowingly permitted others to engage in such a business at the facility;

(b) knowingly permitted any person to make regular use of the facility for disposal of waste;

(c) knowingly permitted any person to use the facility for disposal of a hazardous substance;

(d) knew or reasonably should have known that a hazardous substance was located in or on the facility at the time right, title, or interest in the property was first acquired by the person and engaged in conduct by which he associated himself with the release; or

(e) took action which significantly contributed to the release after he knew or reasonably should have known that a hazardous substance was located in or on the facility.

For the purpose of clause (d), a written warranty, representation, or undertaking, which is set forth in an instrument conveying any right, title or interest in the real property and which is executed by the person conveying the right, title or interest, or which is set forth in any memorandum of any such instrument executed

for the purpose of recording, is admissible as evidence of whether the person acquiring any right, title, or interest in the real property knew or reasonably should have known that a hazardous substance was located in or on the facility.

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An owner of real property on which a public utility easement is located is not a responsible person with respect to any release caused by any act or omission of the public utility which holds the easement in carrying out the specific use for which the easement was granted.

Minnesota Pollution Control Agency  
Division of Solid and Hazardous Waste  
Site Response Section

Board Action Sheet

Board Date: March 24, 1987

Project Manager: Frank Wallner

Date: 3/25/87

Board Agenda Title: Request For Issuance of a R F R A  
to the NuHing Company Regarding Ground Water  
Contamination At and Around the NuHing Truck and Caster Hazardous  
Board Action: Waste Site.

Approved as presented: YES

Denied \_\_\_\_\_

Approved with the following changes: \_\_\_\_\_ (See attached resolution)

Tabled: Yes \_\_\_\_\_ No \_\_\_\_\_ If yes, until when? \_\_\_\_\_

Signed: Frank Wallner

Dated: 3/25/87

# MINNESOTA POLLUTION CONTROL AGENCY

## Agenda Item Control Sheet

Blue = DWQ  
Yellow = DAQ  
Green = DSW  
Pink = Other  
Gold = Info

Agenda # 18

MEETING DATE: September 27, 1983 APPEARANCE REQUESTED - YES: X NO:       
SCHEDULED TIME:                     

PREPARED BY: Edward R. Meyer DATE PREPARED: August 29, 1983  
DATE MAILED : September 16, 1983

SUBJECT: Request for Issuance of a Request for Response Action to the Nutting Truck and Caster Company Regarding Contamination at and Around the Company's Site in Faribault

LOCATION: Faribault Rice  
CITY COUNTY

### TYPE OF ACTION:

Permit <u>    </u>	Request For Hearing <u>    </u>	New <u>    </u>
Stipulation <u>    </u>	Request for legal action <u>    </u>	Modification <u>    </u>
Contract <u>    </u>	Variance request <u>    </u>	Extension <u>    </u>
Policy <u>    </u>	Rulemaking <u>    </u>	Revocation <u>    </u>
Information <u>    </u>	Administrative order <u>    </u>	Other <u>X</u>

### RECOMMENDED ACTION:

Issuance <u>X</u>	Approval <u>    </u>	No action needed <u>    </u>
Denial <u>    </u>	Authorization <u>    </u>	

ISSUE STATEMENT: Ground water beneath the Nutting Truck and Caster Company (Company) site in Faribault is contaminated with a hazardous substance resulting from the Company's disposal of wastes in an on-site pit. The Minnesota Pollution Control Agency (MPCA) staff recommend that the MPCA issue to Nutting Truck and Caster Company a Request for Response Action, which could serve as the MPCA basis for negotiation of an agreement with the Company under which the Company would conduct a remedial investigation of ground water contamination.

### ATTACHMENTS:

1. 18-Page Memorandum and Suggested Staff Resolution
2. Definitions
3. Request for Response Action

MINNESOTA POLLUTION CONTROL AGENCY  
Solid and Hazardous Waste Division  
Site Response Section

Request for Issuance of a Request for Response  
Action to the Nutting Truck and Caster Company Regarding  
Contamination at and Around the Company's Site in Faribault

September 27, 1983

ISSUE STATEMENT

Ground water beneath the Nutting Truck and Caster Company (Company) site in Faribault is contaminated with a hazardous substance resulting from the Company's disposal of wastes in an on-site pit. The Minnesota Pollution Control Agency (MPCA) staff recommend that the MPCA issue to Nutting Truck and Caster Company a Request for Response Action, which could serve as the MPCA basis for negotiation of an agreement with the Company under which the Company would conduct a remedial investigation of ground water contamination.

I. BACKGROUND

The Environmental Response and Liability Act (Minnesota Superfund Act), Minnesota Laws 1983, chapter 121, establishes procedures through which the MPCA can protect the public health or welfare or the environment. The operative provisions of the Minnesota Superfund Act with respect to removal and remedial action are contained in section 17. Section 17, subd. 1 provides that:

Whenever there is a release or threatened release from a facility of any pollutant or contaminant which presents an imminent and substantial danger to the public health or welfare or the environment or whenever a hazardous substance is released or there is a threatened release of a hazardous substance from a facility:

(a) The agency may take any removal or remedial action relating to the hazardous substance, or pollutant or contaminant, which the agency deems necessary to protect the public health or welfare or the environment. Before taking any action the agency shall:

(1) Request any responsible party known to the agency to take actions which the agency deems reasonable and necessary to protect the public health or welfare or the environment, stating the reasons for the actions, a reasonable time for beginning and completing the actions taking into account the urgency of the actions for protecting the public health or welfare or the environment, and the intention of the agency to take action if the requested actions are not taken as requested;

(2) Notify the owner of real property where the facility is located or where response actions are proposed to be taken, if the owner is not a responsible party, that responsible parties have been requested to take response actions and that the owner's cooperation will be required in order for responsible parties or the agency to take those actions; and

(3) Determine that the actions requested by the agency will not be taken by any known responsible party in the manner and within the time requested.

(b) . . . .

In summary, section 17 requires that, before it takes removal or remedial action, the MPCA must (1) issue Requests for Response Action to known responsible parties; (2) notify the owners of the property at which the requests for response action are directed (if the owners are not responsible parties); and, (3) determine that no known responsible party will take the action within the manner and time requested.

In addition, section 17 provides that, before it can issue a Request for Response Action, the MPCA must find that (1) there is a release or threatened release; (2) the release or threatened release was from a facility; (3) the release or threatened release involves either (a) a pollutant or contaminant which presents an imminent or substantial danger to the public health, welfare or the environment or (b) a hazardous substance; and, (4) the persons to whom the Requests for Response Action are to be directed are responsible parties.

[The terms release; facility; pollutant or contaminant; hazardous substance; and, responsible parties are all defined in the Minnesota Superfund Act. These

definitions are set out in Attachment 6 and discussed in Part II (Discussion) of this Board Item.]

The attached Request for Response Action refers to authority found in Minnesota Laws 1983, chapter 121, section 17 and section 18. (See I.A. of the attached Request for Response Action.) The discussion above describes the requirements of Requests for Response Action issued under section 17. The discussion below explains the applicability and requirements of section 18 Requests for Response Action and the relationship between section 17 and 18.

Section 17 of the Minnesota Superfund Act establishes both the procedures through which the MPCA requires responsible parties to take removal and remedial action and the prerequisites for the MPCA to take the action itself. Among other things, Section 18 establishes procedures for bringing actions against responsible parties to compel performance and for injunctive relief.

Like section 17, section 18 includes a provision related to Requests for Response Action:

Subd. 3. [REQUESTS FOR RESPONSE ACTIONS.] A request for emergency removal action shall be made by the director. Other requests for response actions shall be made by the agency. A request shall be in writing, shall state the action requested, the reasons for the action, and a reasonable time by which the action must be begun and completed taking into account the urgency of the action for protection of the public health or welfare or the environment.

Unlike section 17, section 18 does not specify when the Requests for Response Action are to be issued. Given the focus of section 18, it is, however, reasonable to construe that section as requiring the MPCA to issue Requests for Response Action prior to bringing an action to compel performance or for an injunction.

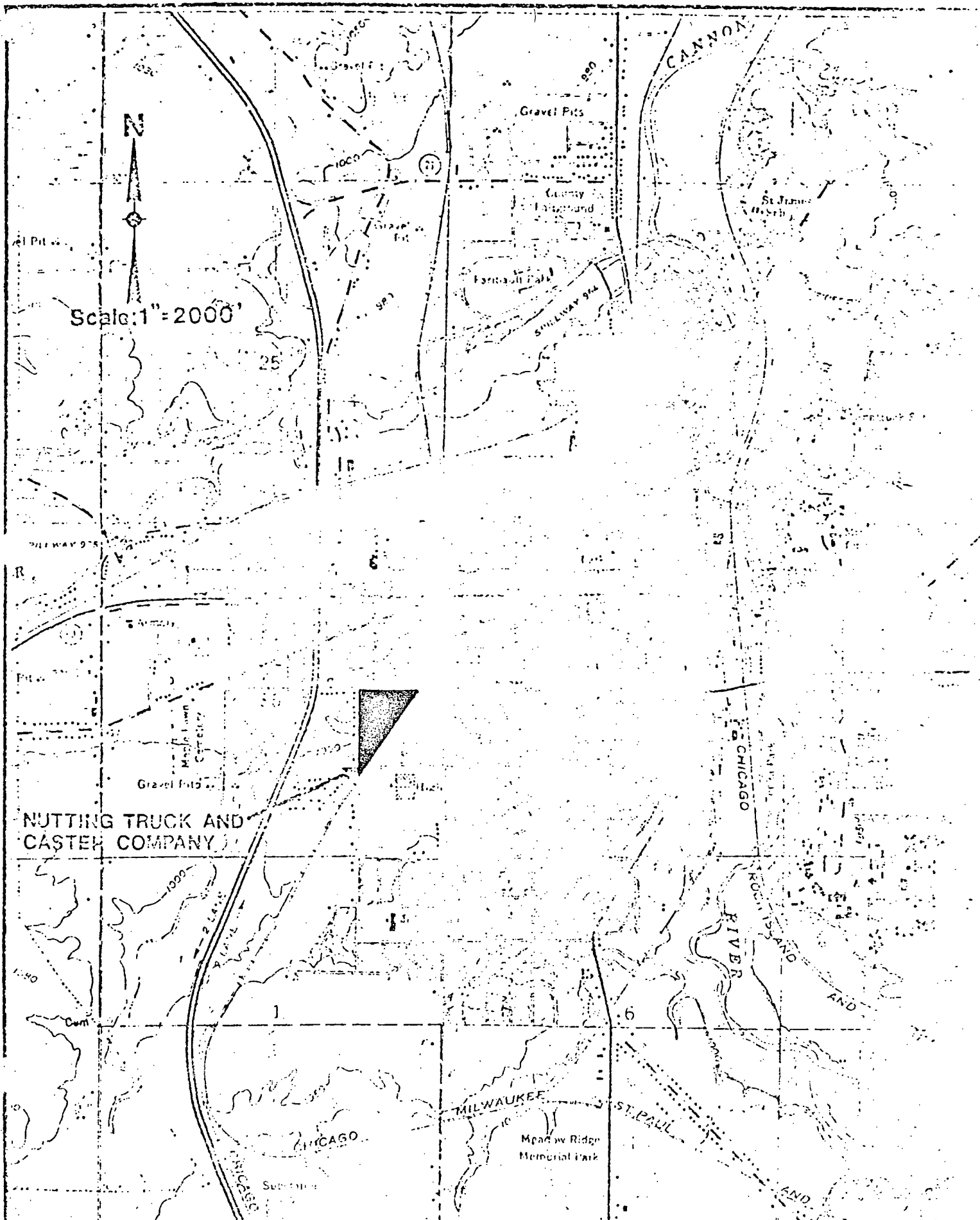
The content of both section 17 and section 18 Requests for Response Action are largely the same: All section 17 Requests for Response Action will be sufficient to constitute section 18 Requests for Response Action. 1/ It is therefore efficient and reasonable for the MPCA to issue a joint section 17 and section 18 Request for Response Action. In doing so, the MPCA will preserve its options to take removal and remedial action or to bring an action to compel performance or for an injunction. For this reason, the MPCA staff recommends in this Board Item that the MPCA issue joint section 17 and section 18 Requests for Response Action.

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1/ Prior to making section 17 Requests, the MPCA must make four preliminary determinations (see discussion supra.) Although it is not explicitly required, these four determinations probably need also be made before a section 18 Request is issued.

There is, however, a substantive difference in the actions the MPCA must take under section 17 and under section 18 after it has issued a Request for Response Action. That is, under section 17, the MPCA may not take removal or remedial action until after it finds that no responsible party will take the action in the time and manner requested in the Request for Response Action. Under section 18, however, the MPCA need not make this finding and may simply commence an action to compel performance or for an injunction after it has issued a Request for Response Action.





## II. DISCUSSION

This discussion is divided into seven sections, one providing a narrative discussion of the history underlying this Request for Response Action (Part II.A.); one for each of the four determinations that must be made before a Request for Response Action can be issued (Parts II.B. - II.E.); one describing the requested action and time table (Part II.F.); and finally one describing the MPCA's intentions upon issuance of the Request for Response Action (Part II.G.).

### A. History underlying this Request for Response Action

The Nutting Truck and Caster Company (Company) is located within the Faribault city limits and within one-half mile of the city's municipal wells. The two maps on the following pages depict these relationships. The Company began operations in Faribault in 1891. Over the past 92 years, the Company has produced a variety of hand pushable carts and caster wheels. Although chemical wastes have been produced for most of this period, the disposal location for these wastes is not documented prior to 1959.

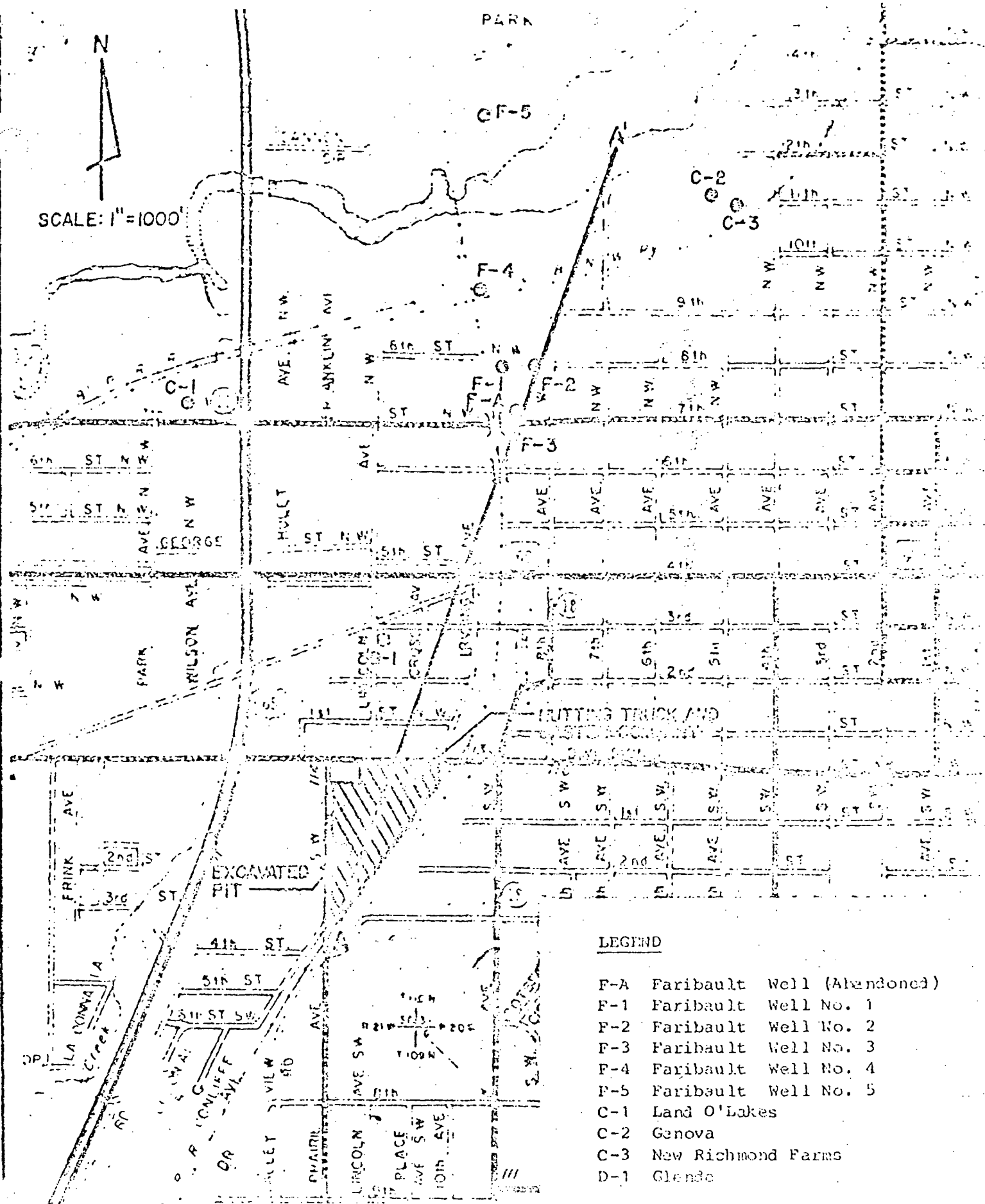
Beginning in 1959, a pit on the Company property was used for disposal of waste chemicals and sludges. In April, 1979, the MPCA staff issued a Notice of Noncompliance to the Company regarding its disposal practices. By late 1980, the Company had excavated the waste chemicals and sludges and contaminated soils in the area of the pit and landspread them under an MPCA State Disposal System (SDS) permit for one time spreading of sludge. The pit area was backfilled and then paved. Analysis of water samples from three monitoring wells installed in 1979 near the pit on the Company property showed that ground water beneath the pit was contaminated with cadmium, lead, cyanide, methylene chloride, tri-chloroethylene and xylene. Two additional monitoring wells were installed in 1981 on Company property. A report by the Company's consultant dated October,

1981 concluded that the contamination of the ground water by these substances would remain very localized at the Company site with the exception of trichloroethylene.

Little immediate concern existed in late 1981 because prior sampling of the Faribault water supply system showed no contamination, the trichloroethylene contamination was thought to be confined to the drift/St. Peter aquifer, and no active drinking water wells in the St. Peter sandstone existed down gradient from the Company property. All five Faribault city wells are directly down gradient and within  $\frac{1}{2}$  mile, but draw from aquifers below a confining layer at the base of the St. Peter sandstone. All five city wells pump to the city reservoir where mixing occurs prior to distribution. Quarterly sampling of the Faribault water supply for trichloroethylene was recommended.

In an August 11, 1982 letter to the Company, the MPCA staff requested installation of three down gradient St. Peter sandstone wells located about 4-5 blocks from the Company site and the installation of one Prairie du Chien aquifer well. These wells would identify the extent of off-site contamination from the Company site. At a September 27, 1982 meeting with the Company, Rice County and the Minnesota Department of Health, the MPCA staff discussed the requirements listed in the August 11, 1982 letter. The Company said it could not afford to install additional wells.

The analysis of the samples from the Faribault city wells taken between September 29, 1982 and November 8, 1982 showed all five city wells to be contaminated with trichloroethylene as well as several other hazardous substances. When this information was forwarded to the MPCA in November, 1982, MPCA staff immediately informed the Company of the results in a November 15, 1982 conference telephone call and emphasized the need to proceed quickly with the investigation requested by the August 11 letter. In a November 22, 1982 letter to



**LEGEND**

- F-A Faribault Well (Abandoned)
- F-1 Faribault Well No. 1
- F-2 Faribault Well No. 2
- F-3 Faribault Well No. 3
- F-4 Faribault Well No. 4
- F-5 Faribault Well No. 5
- C-1 Land O'Lakes
- C-2 Genova
- C-3 New Richmond Farms
- D-1 Glendora

NUTTING TRUCK AND CASTER COMPANY

LOCATION MAP--LOCAL WELLS

E.A. HICKOK & ASSOCIATES  
HYDROLOGISTS-ENGINEERS  
MINNEAPOLIS-MINNESOTA

MAY 1936

the Company, the MPCA staff restated the requested actions from the August 11 letter and requested installation of an upgradient well in the St. Peter sandstone, an investigation as to whether and where waste disposal occurred on Nutting property other than in the identified pit, and that five parameters be examined in all future sampling. In a December 15, 1982 letter, the Company responded by stating its intention to continue monitoring of existing wells, but refused to install additional wells. In a January 6, 1983 letter to the Company, MPCA staff rejected this approach and restated the need for and urgency of determining the extent of off-site ground water contamination. In late January, 1983, the Company retained a consultant to produce additional information on ground water contamination at the Company site. In a March 2, 1983 letter to the Company, the MPCA staff stated that the proposed consultant study would not be adequate to determine off-site contamination and again restated the need for an adequate investigation. On March 22, 1983 the Company said it intended to proceed with its consultant's study even though it was not approved by the MPCA staff.

On April 5, 1983, the Minnesota Department of Health (MDH) provided the City of Faribault with an analytical data interpretation, a current assessment of the water supply, and recommendations for future action. The MDH recommended that 1) the city use a different pumping schedule utilizing uncontaminated wells first as a means to reduce contaminant levels, and 2) the city prepare a plan of action to reduce exposure to residents. The main thrust of the plan would be an examination of the feasibility of (a) constructing new wells and (b) treating existing well water. In an April 19, 1983 letter to the City of Faribault, the MPCA staff pointed out how serious a problem the municipal water system contamination is and that the MPCA requests of the Company were not excessive.

The Company submitted its consultant's May 4, 1983 Phase I report to the MPCA and requested that MPCA staff investigate several other potential sources of industrial waste in Faribault. The Company concluded that it is not a source of the 1,1-dichloroethylene, methylene chloride, or toluene contamination which exists in the city wells, and is not likely to be a major contributor of the trichloroethylene. In a June 24, 1983 letter to the Company, MPCA staff took issue with a number of conclusions in the May 4, 1983 Phase I report and stated that there still is insufficient data to determine off-site contamination.

On July 14, 1983, MPCA staff inspected a number of other industrial sites in Faribault in response to Nutting's suspicions that those industries might be ground water contamination sources. The staff has written follow up inquiry letters to four companies. The letters asked for information on the past disposal practices of each Company and, in the case of one Company which had a disposal pit for metal shavings, an analysis of the wastes at the bottom of the pit. Two companies have so far responded. They both have indicated that they do not have records of their past waste disposal practices. The Company with the waste pit has, however, agreed to sample the pit. The staff will continue to seek information on all of these sites.

On August 30, 1983 MPCA staff met with the Company and its consultant and discussed the Phase I report, explained the status of investigations at other Faribault industries, and explained MPCA staff intentions to proceed with a Request for Response Action. A September 8, 1983 letter to the Company summarizes that meeting. The most recent analyses from the Company monitoring wells reveal that trichloroethylene, a hazardous substance, as defined in Minnesota Laws 1983, chapter 121, section 2, subd. 8, is being released to the ground water from the Company property. Although the primary source of the trichloroethylene contaminant--the Company's disposal pit--has been removed, it is essential to determine the extent of trichloroethylene contamination which has and continues

to move off of the Company property and what, if any, remedial actions are necessary beyond the already accomplished pit excavation. Additional remedial actions will be necessary if extensive off-site ground water trichloroethylene contamination is found and especially if the Company is found to be a significant contributor to the municipal water supply trichloroethylene contamination. The Request for Response Action is necessary to ensure that the Company will undertake an adequate off-site investigation and, if necessary, a Remedial Action Feasibility Study. The hydrogeologic investigation is one which the Company has refused to perform despite repeated requests by MPCA staff over the past 13 months.

The MPCA staff has also submitted the Company facility for possible inclusion on the the U.S. Environmental Protection Agency (EPA) National Priority List. The score the MPCA staff computed was 51 points; the date of submittal was April 21, 1983. The EPA accepted this facility for inclusion on the National Priority List of August, 1983.

B. There is a release

As set out in Attachment 2, "release" is defined broadly in the Minnesota Superfund Act, ch. 121, section 2, subd. 15 to mean "any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment which occurred at a point in time or which continues to occur." [There are certain exceptions to this definition, none of which applies in this case. See Attachment 2.]

Information obtained from the Company consultant's reports dated December 10, 1979, April 28, 1980 and May 4, 1983, clearly demonstrates that there has been and continues to be a release within the meaning of the Minnesota Superfund Act, section 2, subd. 15. Prior to excavation and removal of the waste chemicals and sludges at the pit on the Company property, the

following known hazardous substances were found in the ground water directly beneath the pit in concentrations which exceeded the Safe Drinking Water Act's maximum contaminant levels or the U.S. Environmental Protection Agency's "Water Quality Criteria": cadmium, lead, cyanide, methylene chloride, trichloroethylene, and xylene. Following the removal of pit contents in 1980, trichloroethylene continues to be detected in very high concentrations in the ground water beneath the Company property. Thus, the known hazardous substance which continues to be released is trichloroethylene.

C. The release is from the facility.

As set out in Attachment 2, "facility" is defined broadly in the Minnesota Superfund Act, ch. 121, section 2, subd. 5 to mean

- (a) Any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, or aircraft;
- (b) Any watercraft of any description, or other artificial contrivance used or capable of being used as a means of transportation on water; or
- (c) Any site or area where a hazardous substance, or a pollutant or contaminant, has been deposited, stored, disposed of, or placed, or otherwise come to be located.

"Facility" does not include any consumer product in consumer use.

Under this definition, the area in and around the Company property constitutes a facility within the meaning of the Minnesota Superfund Act, section 2, subd. 5. Evidence that the release came from this facility is contained in other reports, letters, and documents within MPCA files.



D. At a minimum, the release involves hazardous substances.

As set out in Attachment 2, "hazardous substance" is defined broadly in the Minnesota Superfund Act, ch. 121, section 2, subd. 8, to mean:

- (a) Any commercial chemical designated pursuant to the Federal Water Pollution Control Act, under 33 U.S.C. Section 1321(b)(2)(A);
- (b) Any hazardous air pollutant listed pursuant to the Clean Air Act, under 42 U.S.C. Section 7412; and
- (c) Any hazardous waste.

"Hazardous substance" does not include natural gas, natural gas liquids, liquefied natural gas, synthetic gas usable for fuel or mixtures of such synthetic gas and natural gas, nor does it include petroleum, including crude oil or any fraction thereof which is not otherwise a hazardous waste.

Hazardous waste [which is included as a "hazardous substance" under subd. 8(c)] is defined in the Minnesota Superfund Act, ch. 121, section 2, subd. 9, to mean

- (a) Any hazardous waste as defined in section 116.06, subdivision 13, and any substance identified as a hazardous waste pursuant to the rules adopted by the agency under section 116.07; and
- (b) Any hazardous waste as defined in the Resource Conservation and Recovery Act, under 42 U.S.C. Section 6903, which is listed or has the characteristics identified under 42 U.S.C. Section 6921, not including any hazardous waste the regulation of which has been suspended by act of Congress.

Substances that are defined as hazardous under Subd. 8(c) of these definitions have been found at the Company facility. The primary hazardous substance of concern at this time is trichloroethylene, which has been and continues to be found in high concentrations in the ground water at the facility. Other hazardous substances which have been found in the ground water at the facility include cyanide, lead, cadmium, methylene chloride, trichloroethylene and xylene.

E. The persons to whom the response requests are directed are responsible parties.

As set out in Attachment 2, "responsible person" 2/ is generally defined in the Minnesota Superfund Act, ch. 121, section 3, subd. 1, to include persons who

- (a) Owned or operated the facility: (1) when the hazardous substances, or pollutant or contaminant, was placed or came to be located in or on the facility; (2) when the hazardous substance, or pollutant or contaminant, was located in or on the facility but before the release; or (3) during the time of the release or threatened release;
- (b) Owned or possessed the hazardous substance, or pollutant or contaminant, and arranged, by contract, agreement or otherwise, for the disposal, treatment or transport for disposal or treatment of the hazardous substance, or pollutant or contaminant; or
- (c) Knew or reasonably should have known that waste he accepted for transport to a disposal or treatment facility contained a hazardous substance, or pollutant or contaminant, and either selected the facility to which it was transported or disposed of it in a manner contrary to law.

The Nutting Truck and Caster Company is a responsible party under the Minnesota Superfund Act, section 3, subd. 1(a), because the Company owned and operated the facility when the hazardous substance was placed or came to be placed in or on the facilities and at the time of the release, and subd. 1(b), because the Company owned or possessed the hazardous substance.

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2/ The Minnesota Superfund Act, in section 17, refers to "responsible parties." There is, however, no definition of "responsible parties" but is a definition of "responsible persons" in the Act. That definition should be considered to apply each time the Minnesota Superfund Act refers to either "responsible persons" or "responsible parties."

F. The requested response actions are reasonable and necessary.

The attached Request for Response Action describes a series of actions to be taken at or near the Company facility. These actions are reasonable and necessary to protect the public health, welfare, or the environment. These actions are designed to gather information that will allow adequate identification, assessment, choice, and design of remedies necessary to mitigate contamination of ground water at and around the Company facility.

The actions are more fully described in the attached Request for Response Action and include:

1. An investigation of the nature and extent of soil and groundwater contamination at and around the Company property.
2. A report which documents the investigation and makes a recommendation to MPCA staff regarding the need for a Remedial Action Feasibility Study.
3. Prompt initiation and timely completion of a Remedial Action Feasibility Study, if the MPCA Director determines that a Remedial Action Feasibility is needed, to determine the alternatives available to prevent contamination of private wells and/or to remedy existing or future contamination of the Faribault city water system.

The Remedial Investigation and the Remedial Action Feasibility Study specified in the Request for Response Action are reasonable and necessary to provide the information required to implement timely and adequate removal and remedial action at and near the Company property.

The time schedules established for beginning and completing the Remedial Investigation and the Remedial Action Feasibility Study are reasonable given that they are achievable in the period stated. The staff has evaluated

the length of time it takes to accomplish the actions specified in the Request for Response Action, has considered the urgency of the situation, and has attempted to establish an expedited schedule for completing these actions. The time schedule established reflects these concerns.

G. The Actions Taken by the MPCA Staff After a Request for Response Action is Issued.

In this section of the Board Item, the MPCA staff set out their view of the events that follow the issuance of certain Requests for Response Action by the MPCA. The MPCA staff believe that an explanation of the manner in which the MPCA staff is implementing the Minnesota Superfund Act will assist both the MPCA Board and the recipients of Requests for Response Action in determining what constitutes an adequate response to Requests for Response Action.

Since the Minnesota Superfund Act was enacted, it has been and continues to be the opinion of the MPCA staff that, where possible, the MPCA should attempt to obtain from responsible persons a negotiated settlement on the removal and remedial actions that are needed to be undertaken to clean up a hazardous waste site. In the MPCA staff's view, the issuance of a Request for Response Action should not be considered the end to negotiations, but instead a useful and important step through which negotiations can be brought to a head. The MPCA staff further believe that the removal and remedial action specified in Requests for Response Action provide a sound basis for such negotiations.

In the MPCA staff's view, the procedure is as follows: The MPCA issues a Request for Response Action. Either (a) responsible parties and the MPCA staff negotiate and reach an agreement resolving the issues raised in the Request for Response Action or (b) responsible parties refuse to undertake

the actions specified in the Request for Response Action. To the extent negotiations are fruitful [situation (a), above], the MPCA staff will return to the MPCA Board with an appropriate recommendation. If, on the other hand, responsible parties refuse to enter into negotiations or negotiations are not fruitful [situation (b) above], the MPCA staff will bring the matter back to the MPCA Board for a determination that the responsible person will not take the actions requested within the established time periods.

The Requests for Response Action that have been issued to date do not explicitly provide for negotiations. To make it clear that the MPCA is willing to consider amendments to the terms of the removal and remedial action set out in the Request for Response Action [to be set forth in a negotiated Consent Order], the MPCA staff recommend that, where appropriate, Requests for Response Action issued in the future explicitly include a period for negotiating an agreement with the MPCA staff. (See Sections I.D. and I.E. of the attached Request for Response Action.)

### III. CONCLUSIONS

The Company property located at Faribault, Minnesota, is a facility within the meaning of Minnesota Laws 1983, chapter 121, section 2, subd. 5.

The wastes and substances found or disposed at the Company facility are hazardous substances within the meaning of Minnesota Laws 1983, chapter 121, section 2, subd. 8 and 9.

There have been one or more releases and continues to be a release of these hazardous substances at the Company facility within the meaning of Minnesota Laws 1983, chapter 121, section 2, subd. 15.

With respect to those releases, the Nutting Truck and Caster Company is a responsible person within the meaning of Minnesota Laws 1983, chapter 121, section 3, subd. 1(a) and (b).

The actions requested in the attached proposed Request for Response Action are reasonable and necessary to protect the public health or welfare or the environment.

The schedules for the requested actions in the attached proposed Request for Response Action are reasonable taking into account the urgency of the actions for protecting the public health or welfare or the environment.

The MPCA staff intends to continue to negotiate with the Company on the Remedial Investigation and Remedial Feasibility Study that are needed to be undertaken at the Company facility and, through those negotiations, will attempt to bring a negotiated Consent Order to the MPCA Board with an appropriate recommendation.

#### IV. RECOMMENDATION

The MPCA staff recommends that the MPCA Board adopt the suggested staff resolution on the following page.

Suggested Staff Resolution

BE IT RESOLVED, that the Minnesota Pollution Control Agency finds that:

1. The Company property located at Faribault, Minnesota, is a facility within the meaning of Minnesota Laws 1983, chapter 121, section 2, subd. 5.
2. The wastes and substances found or disposed at the Company facility are hazardous substances within the meaning of Minnesota Laws 1983, chapter 121, section 2, subd. 8 and 9.
3. There have been one or more releases and continues to be a release of these hazardous substances at the Company facility within the meaning of Minnesota Laws 1983, chapter 121, section 2, subd. 15.
4. With respect to those releases, the Nutting Truck and Caster Company is a responsible person within the meaning of Minnesota Laws 1983, chapter 121, section 3, subd. 1(a) and (b).
5. The actions requested in the attached Request for Response Action are reasonable and necessary to protect the public health or welfare or the environment.

6. The schedules for the requested actions in the attached proposed Request for Response Action are reasonable taking into account the urgency of the actions for protecting the public health or welfare or the environment.

BE IT FURTHER RESOLVED that the Minnesota Pollution Control Agency issues the attached Request for Response Action to the Nutting Truck and Caster Company. The Chairperson and the Director are authorized to execute the attached Request for Response Action on behalf of the Minnesota Pollution Control Agency.



DEFINITIONS

1. RELEASE, is defined in section 2, subd. 15 of the Minnesota Superfund Act as follows:

"Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment which occurred at a point in time or which continues to occur.

"Release" does not include:

(a) Emissions from the engine exhaust of a motor vehicle, rolling stock, aircraft, watercraft, or pipeline pumping station engine;

(b) Release of source, byproduct, or special nuclear material from a nuclear incident, as those terms are defined in the Atomic Energy Act of 1954, under 42 U.S.C. Section 2014, if the release is subject to requirements with respect to financial protection established by the federal nuclear regulatory commission under 42 U.S.C. Section 2210;

(c) Release of a source, byproduct or special nuclear material from any processing site designated pursuant to the Uranium Mill Tailings Radiation Control Act of 1978, under 42 U.S.C. Section 7912(a)(1) or 7942(a); or

(d) Any release resulting from the application of fertilizer or agricultural or silvicultural chemicals, or disposal of emptied pesticide containers or residues from a pesticide as defined in section 18A.21, subdivision 25.

2. FACILITY, is defined in section 2, subd. 5 of the Minnesota Superfund Act as follows:

"Facility" means

(a) Any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, or aircraft;

(b) Any watercraft of any description, or other artificial contrivance used or capable of being used as a means of transportation on water; or

(c) Any site or area where a hazardous substance, or a pollutant or contaminant, has been deposited, stored, disposed of, or placed, or otherwise come to be located.

"Facility" does not include any consumer product in consumer use.

3. POLLUTANT OR CONTAMINANT, is defined in section 2, subd. 13, of the Minnesota Superfund Act as follows:

"Pollutant or contaminant" means any element, substance, compound, mixture, or agent, other than a hazardous substance, which after release from a facility and upon exposure of, ingestion, inhalation, or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, will or may reasonably be anticipated to cause death, disease, behavioral abnormalities, cancer, genetic mutation, physiological malfunctions (including malfunctions in reproduction) or physical deformations, in the organisms or their offspring.

"Pollutant or contaminant" does not include natural gas, natural gas liquids, liquefied natural gas, synthetic gas usable for fuel, or mixtures of such synthetic gas and natural gas.

4. HAZARDOUS SUBSTANCE" is defined in section 2, subd. 8, of the Minnesota Superfund Act as follows:

"Hazardous substance" means:

(a) Any commercial chemical designated pursuant to the Federal Water Pollution Control Act, under 33 U.S.C. Section 1321(b)(2)(A);

(b) Any hazardous air pollutant listed pursuant to the Clean Air Act, under 42 U.S.C. Section 7412; and

(c) Any hazardous waste.

"Hazardous substance" does not include natural gas, natural gas liquids, liquefied natural gas, synthetic gas usable for fuel or mixtures of such synthetic gas

and natural gas, nor does it include petroleum, including crude oil or any fraction thereof which is not otherwise a hazardous waste.

5. "HAZARDOUS WASTE" is defined in section 2, subd. 9, of the Minnesota Superfund Act as follows:

"Hazardous waste" means:

(a) Any hazardous waste as defined in section 116.06, subdivision 13, any any substance identified as a hazardous waste pursuant to rules adopted by the agency under section 116.07; and

(b) Any hazardous waste as defined in the Resource Conservation and Recovery Act, under 42 U.S.C. Section 6903, which is listed or has the characteristics identified under 42 U.S.C. Section 6921, not including any hazardous waste the regulation of which has been suspended by act of Congress.

6. "RESPONSIBLE PERSON" is defined in section 3 of the Minnesota Superfund Act as follows:

Subdivision 1. [GENERAL RULE.] For the purposes of sections 1 to 20, and except as provided in subdivisions 2 and 3, a person is responsible for a release or threatened release of a hazardous substance, or a pollutant or contaminant, from a facility if the person:

(a) Owned or operated the facility (1) when the hazardous substance, or pollutant or contaminant, was placed or came to be located in or on the facility; (2) when the hazardous substance, or pollutant or contaminant, was located in or on the facility but before the release; or (3) during the time of the release or threatened release;

(b) Owned or possessed the hazardous substance, or pollutant or contaminant, and arranged, by contract, agreement or otherwise, for the disposal, treatment or transport for disposal or treatment of the hazardous substance, or pollutant or contaminant; or

(c) Knew or reasonably should have known that waste he accepted for transport to a disposal or treatment facility contained a hazardous substance, or pollutant or contaminant, and either selected the facility to which it was transported or disposed of it in a manner contrary to law.

Subdivision 2. **[EMPLOYEES AND EMPLOYERS.]** When a person who is responsible for a release or threatened release as provided in subdivision 1 is an employee who is acting in the scope of his employment:

(a) The employee is subject to liability under section 4 or 5 only if his conduct with respect to the hazardous substance was negligent under circumstances in which he knew that the substance was hazardous and that his conduct, if negligent, could result in serious harm.

(b) His employer shall be considered a person responsible for the release or threatened release and is subject to liability under section 4 or 5 regardless of the degree of care exercised by the employee.

Subdivision 3. **[OWNER OF REAL PROPERTY.]** An owner of real property is not a person responsible for the release or threatened release of a hazardous substance from a facility in or on the property unless that person:

(a) was engaged in the business of generating, transporting, storing, treating, or disposing of a hazardous substance at the facility or disposing of waste at the facility, or knowingly permitted others to engage in such a business at the facility;

(b) knowingly permitted any person to make regular use of the facility for disposal of waste;

(c) knowingly permitted any person to use the facility for disposal of a hazardous substance;

(d) knew or reasonably should have known that a hazardous substance was located in or on the facility at the time right, title, or interest in the property was acquired by the person and engaged in conduct by which he associated himself with the release; or

(e) took action which significantly contributed to the release after he knew or reasonably should have known that a hazardous substance was located in or on the facility.

For the purpose of clause (d), a written warranty, representation, or undertaking, which is set forth in an instrument conveying any right, title or interest in the real property and which is executed by the person conveying the right, title or interest, or which is set forth in any memorandum of any such instrument executed

for the purpose of recording, is admissible as evidence of whether the person acquiring any right, title, or interest in the real property knew or reasonably should have known that a hazardous substance was located in or on the facility.

Any liability which accrues to an owner of real property under sections 1 and 15 does not accrue to any other person who is not an owner of the real property merely because the other person holds some right, title, or interest in the real property.

An owner of real property on which a public utility easement is located is not a responsible person with respect to any release caused by any act or omission of the public utility which holds the easement in carrying out the specific use for which the easement was granted.

STATE OF MINNESOTA

MINNESOTA POLLUTION

COUNTY OF RAMSEY

CONTROL AGENCY

In the Matter of the  
Nutting Truck  
and Caster site in  
Faribault, Minnesota

REQUEST FOR  
RESPONSE ACTION

To: The Nutting Truck and Caster Company

I. NOTIFICATION OF OBLIGATION TO TAKE RESPONSE ACTION

A. This document is a Request for Response Action issued by the Minnesota Pollution Control Agency (MPCA) as authorized by Minnesota Laws 1983, chapter 121, sections 17 and 18.

B. YOU ARE HEREBY NOTIFIED that the MPCA has made the following determinations:

1. the Nutting Truck and Caster Company (Company) property located at Faribault, Minnesota is a facility within the meaning of Minnesota Laws 1983, chapter 121, section 2, subd. 5;

2. the wastes and substances found or disposed of at the Company facility are hazardous substances within the meaning of Minnesota Laws 1983, chapter 121, section 2, subd. 8 and 9;

3. there have been and continue to be one or more releases of these hazardous substances from the Company facility within the meaning of Minnesota Laws 1983, chapter 121, section 2, subd. 15; and,

4. with respect to those releases from the Company facility, the Nutting Truck and Caster Company is a responsible person within the meaning of Minnesota Laws 1983, chapter 121, section 3, subd. 1, paragraphs a and b.

C. Having made these determinations, the MPCA formally requests that you take the response action described in Section II., below. A timetable for beginning and completing the actions is set out in Section III. The reasons for the requested response action are set out in Section IV. Section V. describes the intention of the MPCA to take action if you fail to take the requested response action within the timetable set out. Section V. also describes the consequences of failure to satisfactorily respond to this Request for Response Action.

D. A period of sixty (60) days has been provided after the date this Request for Response Action is issued by the MPCA to allow the Company to meet with MPCA staff. The purpose of this time period is to provide for negotiations on the specific terms of the requested actions and the time periods within which these actions will be accomplished. Moreover, by October 15, 1983, the Company must notify the MPCA staff of its intention to meet with the MPCA staff. Failure to notify the MPCA staff by October 15, 1983 of the Company's intention to meet with the MPCA staff may result in a determination by the MPCA that the Company is unwilling to take adequate response actions in this case.

E. If, following negotiations between the Company and the MPCA staff, an agreement between the Company and the MPCA staff is reached the MPCA staff will present the agreement to the MPCA. The agreement, if approved by the MPCA, will control the response actions to be taken at and around the facilities. If no agreement is reached within the allotted time period the matter will be referred to the MPCA for a Determination of Inadequate Response. Upon determining that a responsible person has not adequately responded, the MPCA may authorize litigation to require the responsible party to take the necessary actions and/or to reimburse the state for costs it incurs if it elects to take the necessary actions. These steps are more fully described in Section V.

## II. REQUESTED RESPONSE ACTION

The MPCA has determined (1) that the following actions constitute removal or remedial actions within the meaning of Minnesota Laws 1983, chapter 121, section 2, subd. 16 and 17 and (2) that these removal or remedial actions are reasonable and necessary to protect the public health, welfare or the environment. Consequently, the MPCA hereby formally requests that you take the following actions within the timetables established in Section III.

### A. Remedial Investigation

The Company shall prepare and submit a remedial investigation proposal for MPCA Director review and approval. This proposal shall include, at a minimum:

#### 1. Drift/St. Peter Water Quality

The Company shall identify the impact that the Company's disposal practices have had on the drift/St. Peter aquifer. The first step of this study shall be the installation of at least one upgradient and three downgradient monitoring wells in the drift/St. Peter aquifer. If the analysis of samples from these wells indicates a need for additional wells, the Company shall propose well locations to the MPCA Director and, upon MPCA Director approval, install additional wells.

#### 2. Prairie du Chien-Jordan Water Quality

The Company shall identify the impact that the Company's disposal practices have had on the Prairie du Chien-Jordan aquifer. Once the contamination plume(s) in the drift/St. Peter aquifer is (are) adequately identified, the Company shall install at least one monitoring well in the Prairie du Chien-Jordan aquifer. This delayed installation is intended to allow for proper location of the well. If this well is not located very near a St. Peter aquifer well, a new St. Peter well shall be installed next to the Prairie du Chien-Jordan well.

The monitoring wells required in II. A. 1 and 2 shall be constructed so that representative water samples may be obtained. Well screens in the St. Peter aquifer wells shall be set from the underlying confining layer up to a point which is five feet below the saturation level. All St. Peter wells should be fully penetrating. The Company shall secure written approval from the MPCA Director regarding well construction and locations prior to well installation.

All wells shall be sampled for the following parameters:

Total organic carbon

Total volatiles

Total dissolved solids

Cyanide

Total metals

The Company shall propose a sampling schedule and submit it for MPCA Director approval.

### 3. Confining Layer Investigation

The Company shall characterize the confining layer below the St. Peter sandstone. Core samples shall be retrieved to adequately analyze this layer. A plan for investigation of the confining layer shall be submitted for MPCA Director review and approval prior to commencing field work.

### 4. Source Investigation

The Company shall determine whether wastes have been disposed of on other portions of Company property. This investigation may be accomplished by taking soil borings or by trenching and is prompted by documented contamination in an up-gradient well on the south tip of the Company's property. The Company shall submit a source investigation proposal to the MPCA Director for review and approval.

## B. Remedial Investigation Report

The Company shall prepare and submit a report which documents the investigations completed under Part A above. This report shall (a) identify the extent of the contamination from the Company facility in the drift/St. Peter and Prairie du Chien/Jordan aquifers; (b) characterize the confining layer below the St. Peter sandstone; and (c) present results of the source investigation. The report shall include the Company's assessment of the impact of the contamination on current and future ground water use and the Company's recommendation regarding the need for a Remedial Action Feasibility Study.

## C. Remedial Action Feasibility Study

Once the extent of ground water contamination from the Company facility is known, especially its relationship to the Faribault municipal well contamination, it may be necessary for the Company to prepare a Remedial Action Feasibility Study (Feasibility Study). MPCA staff will review the Company's recommendations under Part B above and the MPCA Director will determine whether a Feasibility Study is necessary. If one is necessary, the Feasibility Study shall identify and assess remedies to prevent contamination of private wells and the City of Faribault's water supply. The Company shall examine the feasibility of as many alternative remedial actions as are technologically feasible in this situation. The Company shall also examine any other alternatives which are



D. Submittals

All submittals and notifications to the MPCA Director required by this Request for Response Action shall be addressed to Edward Meyer, Project Leader, Division of Solid and Hazardous Waste, Minnesota Pollution Control Agency, 1935 West County Road B-2, Roseville, Minnesota, 55113. He shall also be provided progress reports by the fifteenth day of each month. The progress reports shall describe activities conducted pursuant to this Request for Response Action during the preceding month and shall describe activities planned for at least the next thirty day period.

III. TIMETABLE

Taking into account the urgency of the actions for protecting the public health and welfare and the environment, the MPCA has determined that the following schedule constitutes a reasonable timetable for negotiations and for beginning and completing the above requested actions. This timetable is designed to complete all actions at the Company facility relating to the Remedial Investigation and a Remedial Action Feasibility Study.

A. Negotiations

Notification of intent to negotiate.	October 15, 1983
End of negotiation period.	November 28, 1983

B. Remedial Investigation

Retain consultant.	By December 5, 1983
Submit proposals for Remedial Investigation.	By December 19, 1983

Source Investigation

Complete exploration for additional waste/disposal locations.	Within 4 weeks of MPCA Director approval of proposal.
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Drift/St. Peter Water Quality

Submit proposed well locations to MPCA for approval.	By January 2, 1984
MPCA response to proposed well location-- approve, modify, or reject.	Within two weeks of receipt.
Construct Drift/St. Peter wells.	Begin within 4 weeks of approval.
Analyze samples.	Complete analysis within 4 weeks of well completion.
Construct additional wells if needed.	Repeat of 4 previous steps.

Confining Layer Investigation

Analyze confining layer below St. Peter Formation.

Complete within 4 weeks of well completion.

Submit data and plume identification report and confining layer analysis to MPCA for review.

Within 3 weeks of confining layer analysis.

MPCA response to report.

Within 3 weeks of receipt.

Prairie du Chien/Jordan Water Quality

Submit Prairie du Chien-Jordan (PDC-J) well location to MPCA for approval.

Within 3 weeks of report acceptable to MPCA regarding St. Peter plume identification.

MPCA response to proposed Prairie du Chien-Jordan well location.

Within 2 weeks of receipt.

Install PDC-J well (and possibly a nearby St. Peter well).

Begin within 2 weeks of response.

Analyze samples.

Complete analyses within 4 weeks of well completion.

Submit data and plume identification to MPCA for review.

Within 2 weeks of receipt of analyses.

MPCA response.

Within 2 weeks of receipt.

Construct additional well(s) if needed.

Repeat 6 previous steps

C. Remedial Investigation Report

Prepare and Submit Remedial Investigation Report to MPCA.

Within 4 weeks of MPCA response.

MPCA decision regarding need for feasibility study.

Within 3 weeks of receipt of report.

D. Remedial Action Feasibility Study.

Prepare and submit draft feasibility study.

Within 8 weeks of MPCA decision.

Submit final feasibility study.

Within 4 weeks of receipt of MPCA comments.

The MPCA Director shall be promptly notified of any anticipated or actual failure to comply with the dates or other items of this Request for Response Action. Such notice shall include the reasons for the noncompliance and steps proposed for a return to compliance or alternative actions proposed to comply with the intent of this Request for Response Action. The MPCA Director may accept or modify and accept the proposed compliance measures if she determines that such measures are adequate and that the need for the modifications is not a result of failure within the control of the responsible parties.

#### IV. REASONS FOR REQUESTED ACTION

The Company has been in operation at its present location since 1891. In its production of a variety of wheel casters and hand pushable carts, it has used various solvents and strippers. Prior to 1959, the disposal location for wastes is not documented. After 1959, these chemicals were routed by a drainage system to a pit on the Company's property. The use of the pit for waste disposal continued up through 1979. In 1980, the sludge in the pit was excavated and disposed of under a one time permit from the MPCA. With the source of ground water contamination removed, with no contamination evident in the Faribault city wells, and with the Company's financial concerns, the Company facility was given a lower priority in relation to other hazardous waste sites. When trichloroethylene and other contaminants were discovered in November, 1982 in the Faribault city wells, the MPCA immediately requested that the Company determine the extent of the contaminant plume which was leaving its site. The Company performed a limited hydrogeologic study, but has refused to install the monitoring wells which are necessary to determine the extent of contamination in the drift/St. Peter and the Prairie du Chien-Jordan aquifers. Further, the MPCA staff is not in agreement with the findings and conclusions of that study (completed in May, 1983). Given the very high concentrations of trichloroethylene in the shallow monitoring wells on Company property, the investigation is reasonable and necessary to provide the information required to reach a timely decision on the need for a Remedial Action Feasibility Study and, if necessary, to undertake that Feasibility Study.

V. MPCA INTENTION TO TAKE ACTION AND CONSEQUENCES OF RESPONSIBLE PERSON'S FAILURE TO TAKE REQUESTED ACTION

A. YOU ARE HEREBY NOTIFIED that if responsible persons fail to take the requested actions in an adequate or timely fashion, the responsible persons may be subject to the following actions:

1. the MPCA may undertake or complete the requested response action and seek reimbursement from responsible persons for all costs associated with such action; or

2. the responsible person may be subject to an action to compel performance of the requested response action or for injunctive relief to enjoin the release or threatened release.

In either case responsible persons who fail to take the response actions requested by the MPCA in an adequate or timely fashion may be required to pay a civil penalty in an amount to be determined by the court of up to \$20,000 per day for each day that the responsible person fails to take reasonable and necessary response actions.

B. YOU ARE HEREBY FURTHER NOTIFIED that all responsible persons, whether or not they complete the requested response action, may be required to:

1. reimburse the MPCA for all reasonable and necessary expenses it incurs, including all response costs, and administrative and legal expenses, in the investigation and/or clean up of the facilities; and,

2. pay for any damages to the air, water, or wildlife resulting from the release of a hazardous substance, pollutant or contaminant.

C. YOU ARE HEREBY FURTHER NOTIFIED that if you fail to take the requested response action, the MPCA intends to take one or more of the actions described in V.A. and B.

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Cynthia Jepsen, Chairperson

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Sandra S. Gardebring, Executive Director

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Minnesota Pollution Control Agency





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2000

### Scale in Feet

**The Nutting Company  
Faribault, Minnesota**